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Introduction

The European Union does not exert direct influence on religious matters, as these are the exclusive competence of its member countries, but freedom of worship has a significant place in the EU's legislation. The sphere of religion in European law is regulated mainly on three basic principles – freedom, equality and equal rights. EU laws rely to a large extent upon the *Universal Declaration of Human Rights* (November 1948), *Declaration on the Elimination of all forms of Intolerance and of Discrimination Based on Religion or Belief* (UN 1981), *European Convention on the Protection of Human Rights and Fundamental Freedoms* (1950), whose text is, to a considerable extent, identical with provisions concerning the freedom of worship in the UN Declaration, and the *International Covenant on Civil and Political Rights* (1966), as well as on subsequent significant international documents (especially the *Amsterdam Agreement* and the *Charter of Fundamental Rights of the European Union* (Nice 2000)).

The general principles of the legal system of the member countries represent an integral part of the legal order in the EU which signifies that the member countries and regions can – and must – with their experiences, needs and visions, contribute to the protection of human rights within the EU; that is, that human rights at the level of European law are based on the traditions of human rights in the member countries. However, with the *Amsterdam Agreement*, European law took a direct step forward towards religious freedoms. In addition to this, Article 13 of the Agreement provides that the European Council can, under certain conditions, adopt relevant means to curb discrimination on the grounds of sex, race or ethnicity, religious and other convictions, as well as on the basis of individuality, age or sexual orientation.

In the concluding section of the *Amsterdam Agreement*, EU member states unanimously agreed that the EU respects the status which churches, religious societies or religious communities enjoy and will not jeopardise them. In the same way, the EU also respects the status of lay communities. This declaration is also, in a way, connected to the Declaration on the Athos peninsula, annexed to the agreement signed when Greece joined the EU (the Chilandar Monastery of the Serbian Orthodox Church is located on Mount Athos). This declaration guarantees the maintenance of the special legal status of Mount Athos and respects the specific needs and religious traditions of a country entering the Union. This is an excellent illustration of the extent to which the *Amsterdam Agreement* manifests a positive attitude to national and regional structures, taking particularly into account the significant role that religion plays in forming, integrating and preserving a given society.

After October 2000, following sixty years of the rule of an aggressive atheistic regime, the conditions were created in Yugoslavia for a new approach to relations between the state and religious communities not only regarding the harmonisation of laws with European law but also the possibility of developing an awareness of religion as an integral part of the lives of believer-citizens. In the previous period, as in all socialist countries and in Yugoslavia, the concept was advanced, through the educational system, that belief in God was a terrible thing, backward and primitive. The State's propagation of such an attitude, including the 'ethical' questioning of religion as a mechanism used for manipulation in the context of the class struggle, not only radically restricted the human right to freedom of belief and conviction but also contributed to the abuse of religious feelings at the time of the break-up of former Yugoslavia.

After unification into a common state in 1918, all the religious communities in any part of Yugoslavia which had enjoyed legal recognition, as well as those which came to enjoy it after the adoption of the 'Vidovdan' Constitution, were recognised by a special law. There was no proclamation of a state church and the Constitution retained the link between the state and the recognised religious communities by providing them with the status of legal corporations. Before World War II, Yugoslavia's population was divided between six recognised religious communities: the Serbian Orthodox Church; Roman Catholic; Muslim; Evangelical; Jewish; and Greek-Catholic.¹

After World War II, laws regulating relations between the State and the recognised religious communities were abolished and, subsequently, this was an area which, despite the adoption of several laws (the last of which was the law on the legal position of religious communities of 1977, abolished in 1992), remained legally undefined. In the nineties, with the abolition of these laws at the federal and the republican levels because they had become obsolete, relations between the State and the religious communities (excepting the Constitution) remained without legally-defined regulations.²

The Yugoslav Constitution contains a certain number of principles relating to religious freedom, as do the constitutions of the federal units, but a significant number of issues remained outside of the legal regulations. These include: the status of churches and religious communities, and the way they are set up and registered; the right to organise religious education in state schools and to provide spiritual aid in the Yugoslav army, as well as in hospitals, prisons and old age homes; the financing of religious communities; freedom of information on religious issues; the legal protection of the clergy; the problem of the abuse of religious freedom; and others. In consequence of

- 1 Mirko Petrovic (1997): *Konkordatsko pitanje (The Question of Concordat)*, Belgrade, p. 116.
- 2 Likewise, the abolished laws had not precisely regulated the relations between the State and the religious communities – there was no Registry of these communities on the territory of the Federal Republic of Yugoslavia, nor was there the possibility of determining the exact number of such communities that had registered themselves at various levels and at various times. Thus, certain religious communities received letters informing them that all the existing religious communities on the territory of Yugoslavia at that time were recognised (1950), others were registered as associations of citizens (at police stations run by the Ministry of the Interior, the municipalities and the republican and federal ministries), while still others were not registered at all and operated entirely outside the legal framework.

all these issues, the Federal Ministry for Religious Affairs/Federal Secretariat for Religious Affairs (FMRA/FSRA)³ considered that it could advance the realisation of human rights and cultural and traditional values, through harmonious relations between the State and the religious communities, by drafting a Law on Religious Freedom which would protect and confirm religious freedoms as guaranteed in the Yugoslav Constitution (Article 43), as well as provide legal regulations for relations between the State and religious communities. It thus undertook to draw up such a law.

Since November 2000, a large number of talks have been held with the heads and representatives of the religious communities during reciprocal visits and at joint meetings between these heads and members of legal expert teams. During the first two months of the work of the FMRA, a series of visits to and receptions of the heads and representatives of the more long-standing religious communities, and meetings and talks with a certain number of smaller and newer religious communities, took place. After the first official visit to and reception of the heads of religious communities, and after becoming familiarised with the current state of relations between the State and the religious communities, and the major issues and problems involved, subsequent meetings between the heads and representatives of the religious communities and the representatives of the Federal Ministry for religious affairs and, since the end of January 2001, with the Republic's Ministry for religious affairs, have taken place on a joint basis.

The draft law on religious freedom

In line with the activities of the federal government, which are intended to bring about the harmonisation of Yugoslav legislation with that of the European Union, the FMRA/FSRA commenced working on its Law on Religious Freedom in January 2001 with the appointment of a working party consisting of lawyers from the Belgrade School of Law which was charged with drawing up a draft proposal (Avramović, Parivodić, Ilić, Mirković).

The working party has both consulted and maintained regular contact with some of the most prominent world legal experts on settling relations between the state and religious communities and who, for this purpose, have visited Belgrade several times (Papastathis, Robbers, Durham and Ferrari). Furthermore, the solutions envisaged in the final phase of the Draft have been verified at international conferences.⁴ As suggestions were agreed and corrections made to the Draft, joint meetings were held with the representatives of the religious communities, at which the viewpoints of the various communities existing and active in Yugoslavia could be harmonised.

The Draft states that there is no state religion in FR Yugoslavia while the religious communities established to carry out religious duties, which are defined as having legal identity, are equal, free to determine their religious identity and independent in

3 This is the same federal organ. After changes within the federal government, some federal ministries (agriculture, sport, religious affairs, etc) became federal secretariats and the ministers became secretaries. The difference between a ministry and a secretariat is that a minister has the right to vote in meetings of the government while a secretary has no such right.

terms of the establishment of their internal organisation, the performance of religious rites and the management of their other religious affairs.

The Preamble stresses the significance of the 'traditionally present churches and religious communities' and points out that the Serbian Orthodox Church, as one such traditional institution, has played a decisive historical role in preserving and developing national identity, and that it exercised a powerful social and cultural influence. The Draft also stresses the presence, significance and influence of religious communities in general and, in particular, those of the Islamic community, the Roman Catholic Church, the Jewish community, the Evangelical Christian churches of the Augsburg Confession and the Christian Reformed Church.

The criterion in the Preamble for individually citing these seven churches and religious communities lies in that a special legal regulation did exist for them within the Kingdom of Yugoslavia; this was done in the effort to maintain continuity with respect to earlier provisions regulating the legal status of religious communities, which had been forcibly annulled during the communist regime.

Representatives of the 'traditional' religious communities presented a number of observations which were adopted during the drafting process although some of these referred to matters beyond the scope of this Law, such as the restitution of property, tax and customs facilities and other matters seeking the righting of injustices committed during the socialist revolution. At the outset, there were proposals and wishes for relations between the State and the religious communities to be organised differently, in accordance with the model of some neighbouring countries. However, after discussions with the team of experts and the heads of other religious communities, agreement was reached regarding the legal solutions being proposed. In this context, many views emphasised that the religious communities traditionally present on the territory of the FR Yugoslavia were:

Insufficiently protected from the well-financed and organised new religious communities which were unhampered in taking away believers while the traditional religious communities had not even yet begun to recuperate from the pogroms of the past decades.

- 4 *Law and Religion in Post-Communist Europe*, 10-11.05.2001 (Avramović). *Relationship Between the State and Church in Serbia*, Berlin 6-7.06.2001 (Sijaković, Milovanović, Avramović). Seminar on *Freedom of Religion or Belief in OSCE Region: Challenges to Law and Practice*, The Hague 26.06.2001 (Milosavljević). *Conference on National and Ethnic Communities and Minorities in South-East Europe – Domestic and Regional Confidence Building*, Belgrade 5.07.2001. *Preparing the FR Yugoslavia for European Integration*, Belgrade 6.07.2001 (Milosavljević). *Implementing the 1981 UN Declaration on Religious Tolerance and Non-Discrimination: Twenty Years of Experience*, Provo, Utah, USA 6-10.10.2001 (Milosavljević). *International Consultative Conference on School Education in Relation to Freedom of Religion or Belief, Tolerance and Non-discrimination*, Madrid 23-25.11.2001 (Milosavljević). Round Table: *Contribution of Religious Communities in the FR Yugoslavia to Reconciliation, Respect for Differences, Democracy, Human Rights, Protection of Minorities, Co-operation and Stability in South-East Europe*, Belgrade 14-15.12.2001 (Milosavljević). *Church, State, Civil Society*, Belgrade 2-3.03.2002 (Sijaković, Milovanović, Avramović, Milosavljević and Parivodić).

The smaller and newer religious communities expressed concern that discrimination was being introduced in the Draft between the 'big' traditional religious communities cited in the Preamble and themselves. However, at a series of discussions with their representatives, individually and, later, together with the team of experts and at conferences, many of these dilemmas were clarified, beginning with the Preamble and proceeding to questions of registration and religious teaching.

The Preamble, which is not a normative part of the Law, allows that the viewpoints expressed in it need not appear in a descriptive form in the norms themselves. Consequently, this approach to defining religious communities with a long historical presence on the territory of the FR Yugoslavia is primarily of declarative significance and in no way discriminates against the rights of other religious communities, whose significance and influence are also emphasised in the Preamble.

As regards the procedures for the registration of religious communities, it was concluded, after the talks were held, that the various forms of registration do not give rise to discriminatory legal consequences; that is, after registration has been completed, all the religious communities retain an equal position. The sole difference is in the manner of their registration, which provides that the legal subjectivity of the religious communities cited in the Preamble, in view of their exceptionally long historical presence as organisations with legal identity being regulated by laws which pre-date World War II, and only thereafter abolished, actually derives from the Law itself. The entry into the Registry of these organisations is by filling out the data required by the Law. This procedure does not grant greater rights to the religious communities cited in the Preamble than to the other religious communities which exist or which will be established; there is only a small procedural difference in the manner and conditions of their registration. This is a one-off act and honours the special and long-established regulations which exist concerning the religious communities.

All religious communities, big or small, cannot, according to the Draft Law, lose any of their previously acquired rights, so that they retain the legal status they had already gained before the Law comes into force, and may even improve it thanks to the possibility of becoming registered as religious communities (entitling them to tax and customs exemptions) and being guaranteed a series of rights accruing from the Law. If religious organisations wish to re-register themselves from the status of associations of citizens to one of a religious community, they can do so within six months of the day the Law comes into force. Religious communities can, within that period, submit applications to the competent ministry at which point, in contrast to future such organisations founded in keeping with this Law, they will not have to go through the whole procedure but need only give proof that they have previously acquired the legal identity, i.e. when and where they were registered, and submit certified copies of their prior registration. In the case of re-registration, the Law specifically provides for full legal continuity. In this way, the new Law does not impinge upon acquired rights but instead allows the possibility of their legal status to be more favourable, if communities so wish.

All the representatives of the religious communities who were interested in the question of registration (one of the key issues and main topics at most of the conferences on religious freedom held in Serbia and abroad), and all participants in the dis-

cussion, accepted the solutions offered as being the best on offer. Such a solution, in fact, resolves three issues at the same time: symbolic honour is given to churches and religious communities which have exceptionally long existence and legal identity; the historical injustice committed via the abolition of the law that regulated relations between the State and religious communities before World War II has been rectified; and the possibility of some of the major long-standing religious communities refusing registration for any reason has been forestalled because their existing position is recognised;⁵ that is, religious communities already in existence and listed as associations of citizens are recognised,⁶ while the free formation of new religious communities is made possible, even with a very small number of members.⁷

The members of large and small religious communities voiced their concern on several occasions regarding the implementation of the Law because, even though in certain articles it presents standpoints on particular issues, these cannot always be implemented on the basis of the Law alone. For example, the Draft provides that the state may offer material aid to religious communities, on the precise understanding that such aid is realised through corresponding taxation policy, which is the subject of separate legal regulations. In contrast to a range of other countries, where regular annual state subsidies are provided to religious communities from public funds, this Law does not provide for such a permanent commitment in view of the objective financial possibilities of the State. However, it does imply that material assistance is possible and that, when conditions have changed, the practice of regular annual material assistance to religious communities will be commenced.

The religious communities are also interested in a whole series of other aspects of the planning of co-operation between the State and the religious communities, such as the use of cemeteries, the definition of religious objects and how the co-ordination and subordination of the various levels of executive authority will function, etc.

In the talks with representatives of small religious communities, the concern was frequently heard that they would not be registered. However, the Draft Law precisely

- 5 Article 6. Religious communities referred to specifically in the Preamble of this Law and their existing organisational units have legal identities. Their listing in the Register is carried out based on data reported by them to the competent Ministry for Religious Affairs (...).
- 6 Article 7. Existing organisations with legal identity which have religious objectives (religious communities), maintain the legal personality acquired before the enactment of this Law: 'The legal persons in Paragraph 1. of this article may, within 6 months of the day of the coming into force of this Law, file an application for registration, which need not include the requirement under Article 8, Paragraph 2 item 1 of this Law. In addition to an application, an authorised copy of the decision of a previous registration or another public document proving domestic legal identity has to be presented. If the conditions laid out by this Law are fulfilled, those with legal identity from Paragraph 1 of this Article will be removed from the existing lists, but their uninterrupted legal personality shall be recognised. A decision of the registration is to be sent *ex officio* to the state body who registered it previously, to erase it from the evidence.
- 7 Article 8, Paragraph 2, item 1: A decision on the founding of a religious community with the names, surnames, numbers of identification documents and signatures of at least 10 citizens of the FR of Yugoslavia, or resident aliens having full business capacity.

enumerates the conditions for registration as well as the reasons why the registration of a religious community may be refused.

In case an application is incomplete, the applicant will be required to complete it within 30 days. Where another religious community is already listed in the Registry under the same name or a similar one, the applicant will be required to make changes on the basis that the already registered religious community will also be asked for its opinion on this matter.

An application for listing in the Registry must be refused if, on the basis of knowledge of the doctrine, objectives and methods of operation of the applicant organisation, these are confirmed as being in contradiction with the Constitution or with public order. An application can also be refused if the FMRA/FSRA judges that its doctrine, objectives and methods of activity are such as to endanger the rights and freedoms of others, especially the life or the physical or mental health of people, the rights of children, or the right to integrity of the family or property. In this context, the FMRA/FSRA is particularly guided by the decisions of the European Court of Human Rights, as well as by the relevant decisions linked to the registration of religious communities in EU countries. These decisions avoid the need to apply restrictive conditions on the registration of new religious communities and also avoid defining sects, esoteric societies and other controversial bodies which are not adequately defined in any law. Instead, in such cases, those decisions on the registration of religious communities which have been adopted by EU countries will be respected.

As a result of this activity, and also because of the recommendations made by the European Commission after the second meeting on 7 November 2001 of the FRY/EU consultative working group on the harmonisation of legislation inside the country, it will become necessary in the coming period to undertake a survey of the state of the legislation on religious freedom to which this Law refers in particular. This will ensure that harmonisation is adequately prepared and, thus, that possible contradictory provisions in the various federal and republic laws can be avoided.

Law on de-nationalisation (the restitution of property and compensation)

The long-standing religious communities on the territory of the FR Yugoslavia were interested in issues linked to denationalisation because, before the Second World War, they had owned properties which were subsequently nationalised through a series of laws on expropriation via regulations effecting agrarian reforms, including confiscation, sequestration, nationalisation and expropriation. The term 'property of the religious communities' implies the property which other former owners also had, whether with actual or with legal identities; that is, real estate, movable goods and rights such as: land ownership, forests, apartment and business premises; firms with all their equipment, stocks, valuables, shares; associations of all types; funds, bonds and all kinds of payment claims; participation in shops and enterprises; and mining and industrial property rights and other claims, including those arising from authorship.

These properties, and appeals for help in accelerating the process of denationalisation, have frequently been the subject of talks with the heads and representatives of the religious communities. During the past decade, a number of proposals have been

presented for the denationalisation of the property of the Serbian Orthodox Church. *The Draft Law on the Restitution to the Orthodox Church of Buildings – Memorial Foundations, Legacies, Housing and Construction Lands* - was adopted by the National Assembly of the Republic of Serbia on 18 April 1991; which the government then submitted on 22 April to Milošević for his signature. He, in turn, vetoed it and sent it back for a repeated vote on 25 April, with the promise to the Serbian Patriarch that the suspended Law would certainly be re-adopted when certain defects in the original text had been removed. These defects were that:

1. the Law should return the nationalised property only to the Serbian Orthodox Church and not to other religious communities
2. construction lands were also to be returned in circumstances in which the 1958 Law on the unique status of such lands had been violated
3. the original text of the adopted Law also contained important defects and loopholes in the way it had been drafted.

The presidents of the groups of deputies belonging to the SPO (Serbian Renewal Movement) and the DS (Democratic Party) – respectively, Rakitić and Koštunica – delivered a new proposal which removed the defects and returned the Law to the Assembly for a vote on 15 May. However, the then government gave a negative opinion on 23 May, and so the President of the National Assembly of the Republic of Serbia (Bakocević) refused to put the suspended Law up for further vote.

The Draft Law on the Restitution to Churches and Religious Communities of Buildings – Memorial Foundations, Residential and Business Premises, Forests and Arable Lands, which had been transformed through nationalisation or on some other grounds into socially-owned property, was presented to the Federal Assembly on 13 May 1993, but the Law has never been passed.

Had the said Law been passed in 1991 or 1993, the Serbian Church would have been given a part of the property in both land and in other immovable and movable goods that belonged to it in Kosovo and Metohija. Consequently, the legal aspect of property ownership would have had a specific weight with regard to the manner of settling the situation in Kosovo and Metohija in 2001.

After the elections in September 2000 and the governmental changes in the October, which were welcomed by all the heads of the religious communities in FR Yugoslavia, beginning with Patriarch Pavle, the religious communities expected that past injustices would be redressed.

At the outset, the idea was to renew the process of the adoption of those previously drafted laws that the National Assembly had not adopted but, when it was announced that a general law on denationalisation would be proposed, the representatives of the religious communities put forward the idea that it would be preferable to wait until such a new law had been adopted. At the Republic level, a Draft Law on Restitution and Compensation was drawn up (on 12 June 2001) but this had not, by the year's end, been entered into the Assembly's procedures and was clearly not a priority. However, when the Law on Privatisation was adopted (*Official Gazette* RS 38,

29 June 2001), the heads and representatives of the religious communities began voicing their concerns relating to the protection of their properties that had been confiscated after World War II and which they had hoped would have been restituted to them following the democratic changes in the country. For this reason, during talks and meetings with the representatives of religious communities, it was concluded that it would be necessary to seek out the possibilities for restituting the confiscated properties through a special law to be adopted before the start of the process of selling those properties whose former owners were the religious communities. For this purpose, a team of legal experts headed by Prof. Dr Kosta Čavoški undertook to improve and harmonise the existing Draft Law on the Return to Churches and Religious Communities of Buildings – Memorial Foundations, Houses, Legacies, Residential and Business Buildings, Forests and Arable Lands which had been transformed into socially-owned property either on the grounds of the Law on the Nationalisation of Apartment Buildings or for other reasons.

In this connection, several meetings and talks took place with representatives of the religious communities. Subsequently, the new Draft will be ready for the procedural process of the federal government and the federal Assembly.

The renewal of religious education in state schools

One of the issues raised most frequently by the representatives of the religious communities has been the return of religious tuition in the educational system of the FR Yugoslavia. It has been stated in talks that this action would rectify the injustice done to the religious communities under an act of the Ministry of Education after the Second World War when such activities were excluded from the educational system even though the Orthodox, Roman Catholic, Evangelical, Reformed Christian, Islamic and Jewish religious communities were entitled to conduct such activities under existing laws. Up to when the first educational plan for reformed elementary schools came into force on 8 July 1959, several school plans and programmes were changed, especially during the first seven years after World War II (in 1947 there were even two such plans and programmes). The first of these, published in 1945, was radically different from that in use in pre-war Yugoslavia in which religious tuition had one-hour classes in the first to the fourth grades. The first plan was used only in the first half of the 1946/47 school year, as the Ministry of Education of the People's Republic of Serbia printed a new second plan and programme on 8 February 1947 which contained nine instead of eleven subjects, with religious instruction and embroidery classes omitted. The subject of embroidery was re-introduced in the third plan which emerged five months later on 20 September 1947.

In the view of the team of legal experts from the Ministry for Religious Affairs, in comparative law and doctrine in Europe the dominant standard is that the state, within the frame of its obligations to guarantee religious rights and freedoms, also has to guarantee the realisation of religious rights and freedoms, as well as to ensure the possibility of state-run schools providing religious tuition. Bearing in mind the process of harmonising legislation in the FR of Yugoslavia with that applying within the EU (in only four countries in Europe – France, Slovenia, Albania and Macedonia – is this

subject not taught in state schools) and for the purpose of rectifying the injustices imposed during the authoritarian atheist regime, the FMRA met the demands of the religious communities to have religious instruction re-instated in elementary and secondary schools in the FR Yugoslavia.

To this end, in association with the Ministry for Religious Affairs of the Republic of Serbia, and as decisions on educational plans and programmes fall within the competencies of the Ministry of Education and the Government of the Republic of Serbia (as do other matters linked to the functioning of schools), a first meeting was held between the representatives of the state and the religious communities and a legal and educational team from the Ministry on 14 March 2001.⁸

Under Article 14 of the Draft Law on Religious Freedom, the state ensured religious education in state schools, thus fulfilling the right of taxpayers to have such instruction available for their children, while it remaining the right of parents and children to take advantage of this possibility or not depending on their convictions. This same Article provides that the state can organise religious tuition for those churches and religious communities cited in the Preamble. Those who do not opt for religious instruction have the choice of tuition in some other corresponding alternative subject that is deemed to develop ethical values, notions of humanism, moral tolerance or understanding between peoples. The state is not in a position to organise religious instruction for all the religious communities registered, but it is obliged to do so only for certain ones – namely, for those who enjoyed this right also before World War II on the grounds of the laws enacted by the Kingdom of Yugoslavia and which were abolished by the post-war authorities. This solution has been adopted by a large number of countries and is not considered discriminatory *vis-à-vis* smaller religious communities. It is understood that religious instruction can be taught by elementary school instructors, teachers and professors who are already teaching other subjects, but Paragraph 5 of Article 14 of the Draft Law stresses their right not to choose to teach this subject. The same decision guarantees the right of religious communities to make proposals and to deliver their approval when teachers are selected for this subject.

The activities geared towards the renewal of religious tuition in state schools were gradually joined by the group of deputies of the Democratic Opposition of Serbia (DOS) and the Committee on Education of the National Assembly of the Republic of Serbia while, in a decision adopted at its 5th Session on 23 April 2001, full support was given to the onset of religious education in a statement by Milovanović, Minister for Religious Affairs of the Republic of Serbia.

8 For the Federal Ministry for Religious Affairs – Prof. Dr B. Sijaković, Minister; for the Ministry for Religious Affairs of the Republic of Serbia – V. Milovanović, Minister; for the Ministry of Education of the Republic of Serbia – V. Majić, Deputy Minister; DFMRA – Milosavljević, Prof. Dr S. Avramović and M. Parivodić; Bishop of Šumadija Dr Sava, the Braničevo Bishop Ignjatije; and others. The meetings were held regularly (on 29 March; 26 April; 9, 15 and 30 May; 26 June and 18 July) and, gradually, viewpoints were co-ordinated in which dilemmas and misinformation relating to the renewal of religious education in schools were overcome.

The FMRA participated in the first stage of activities connected with the revival of religious education in elementary and secondary schools. However, as stated already, decisions regarding plans and programmes fall within the competence of the Republic's Ministry of Education, so that final work in this area, including the formation of a Council of the Ministry of Education in which the representatives of the religious communities are present, the writing of textbooks and the resolving of the status of teachers teaching this subject, and, above all, the adoption of rules regarding plans and programmes for religious tuition (*Official Gazette* of the Republic of Serbia; *Educational Herald* No. 5 of 20 October 2001) have been carried out at the republic level in co-operation with the FMRA and the RME (Ministry of Education), as well as representatives of the religious communities and the federal team of legal experts.

Law on radio broadcasting in the Republic of Serbia

Article 41 of the Draft Law on Radio Broadcasting of the Republic of Serbia prohibits a licence owner from broadcasting programmes if it is a religious community, or some other religious organisation or one with legal identity whose founder is a religious community. This Article is in contradiction with Article 20 of the Draft Law on Religious Freedom which stresses the right of religious communities, in accordance with the Constitution and the law, to publish and distribute texts by means of which to inform those interested in religious matters and in the activities of religious communities, as well as to set up and use the media for this purpose.

The representatives of religious communities, both in individual conversations and in correspondence, as well as jointly at meetings and round tables (on 14, 15, 18 and 20 December 2001) expressed their grave concern regarding this article of the Draft and voiced the hope that there would not follow such gross discrimination against religious communities. They pointed out that it was not clear to them that an association of citizens had the right to establish mass media institutions while religious communities did not. The heads and representatives of the religious communities consider such a situation to be not only an infringement of human rights and discrimination, but also a direct violation of the law because some religious communities on the territory of FRY already had radio stations, some of which had received international awards, such as Radio Caglavica (Kosovo and Metohija), located in the Gračanica Monastery and whose editorial policies are conducted by Raška-Prizren Bishop Artemije alongside the clergy and monks of the Monastery (US Democracy Commission grant).

The Federal Secretariat for Religious Affairs considers that the adoption of the Draft Law on Radio Broadcasting without amendment would disquiet not only the domestic public but all the religious communities which have already expressed their concern (Serbian Orthodox Church, Roman Catholic, Evangelical, Reformed Church, the Islamic community, the Jewish community and smaller communities such as the Baptists, Adventists, Evangelical Alliance, and others). World/public institutions would also be concerned. According to information collected so far by the Secretariat, religious communities in Europe and in the USA are allowed to establish media for public information.

Population census in the FR Yugoslavia

Data on faiths in the 1991 Census was collected on the basis of the freely given declarations of the population regarding their religious affiliation. Article 174 of the Constitution of the Socialist Federal Republic of Yugoslavia guaranteed freedom of religion to its citizens.

According to the guidelines given to the Census-takers as part of the methodology to be used in the preparation, organisation and implementation of the Census, these were obliged to note down exactly the words used by the person being questioned about his or her religious belief. In this context, in answer to this question it was not important to note whether the person was registered in a book of membership of a given religion but rather whether or not the person considered him/herself to be a member of such a faith.

One of the parents, foster parents or guardians gave replies to this question for children under 15 years of age.

In the circumstances that the Census was not fully carried out in Kosovo and Metohija, or in the Bujanovac and Preševo municipalities, estimates were made for population figures by nationality down to the municipal level. In the municipalities, the estimated figure for those with Albanian nationality was calculated as the difference between the expected total population (on the basis of hypotheses concerning birth and mortality rates, as well as migrational balance by age and sex during 1981-1991), the censused or un-censused and the estimated 'non-Albanian' population.

According to the results of the 1991 Census of the Yugoslav population (excepting Kosovo and Metohija and the municipalities of Bujanovac and Preševo), 80% of the population are Orthodox (6 988 901 Serbian Orthodox Church, together with other Orthodox minorities – Romanian, Bulgarian, etc); 6.10% are Roman Catholics (533 349); 5.36% are Muslims (468 713); 1.02% are Protestant (89 369); while 0.01% are Jews (1 008); 0.005% are pro-Oriental cults (520); 0.16% come from other religious communities (14 256); 0.09% are believers who do not belong to any confession (8 468). The remainder are made up of 1.95% who are atheist (170 528), while 5.25% (458 820) did not reply).

This 1991 Census data is used not only by domestic but also foreign analysts and, on the grounds of this data, they are able to arrive at conclusions and establish a basis for their estimates and opinions.

When statistics are vague and ambiguous, there is room for manipulation, appropriation, exaggeration or reduction in the number of members of a nation or religious community. Moreover, when it is borne in mind that Census data is also used by the heads of religious communities as well as in the world at large, the religious communities in the FR Yugoslavia were, understandably, astonished when they learned that, in the Census planned for 2002, there was originally to be no provision relating to religious confession. They have therefore expressed their intention to make public their views on this issue.

The attitude of the FSRA is that, while there is no reason to leave out the question of religious affiliation in the data entered on the Census forms, the question of whether one belongs to a specific religious community should be set down in such a

way that is in compliance with the right to free belief and conviction, as well as with the Constitution of the FR Yugoslavia. This means that the question should list the following possibilities:

1. naming a specific religion
2. not belonging to any confession
3. undecided
4. asserting the right not to express his/her views.

In this way, it should be possible to obtain precise statistical data for the full protection of the rights guaranteed in the declarations and charters according to which every person has the right to freedom of conscience and religion; that is, to have, not to have and to change, religion or belief (Article 18 of the Universal Declaration on Human Rights; Article 9 the European Convention on Human Rights and Basic Freedoms; Article 18, Paragraph 1 of the International Convention on Civil and Political Rights; Article 10 of the Charter of Fundamental Rights of the European Union).

Religious intolerance and assaults on members of the church, religious communities and religious objects

One of the frequent themes of talks with the heads and representatives of religious communities was the violation of religious freedom, religious intolerance and assaults on members of the church or religious communities and on religious objects. As ethnic and religious affiliation of the population in Yugoslavia is closely linked, it is not possible to separate out acts of violence against religious communities and religious minorities from similar acts directed against ethnic communities and ethnic minorities. Similarly, some religious minorities, according to the Census on the territory of the FR Yugoslavia, constitute ethnic majorities in individual areas and municipalities. Thus, Albanians belonging to the Islamic community are a minority in some areas but, in Kosovo and Metohija they are the majority; while Serbs, as members of the Orthodox religious community, make up the majority population in the FR Yugoslavia, but a minority in Kosovo and Metohija. The same holds true for members of the Islamic community who are a minority in Belgrade, whereas members of the Serbian Orthodox Church are the majority; in contrast, they are a majority in Raska/Sandžak, where members of the Orthodox faith are the minority. Likewise, some attacks on members of a religious community are motivated by reasons which may be political in nature; they thus cannot be deemed an act of religious intolerance, although it cannot be excluded that they could be motivated by religious hatred. During the past year, after the democratic changes in FRY, there has been a noticeable decrease in acts directed at endangering religious freedoms, in attacks on members of religious communities on the territory of the FR of Yugoslavia (excluding Kosovo and Metohija), while the US Secretary of State, in January 2001, removed the official identification of the Yugoslav government in 1999 and 2000 as a 'particularly severe violator' of religious freedom.

The clergy, monks and believers of the Serbian Orthodox Church are exposed to continuous political and religiously-motivated violence in the Republic of Montenegro. This was a frequent topic of the talks and several proposals have been made for developing activities aimed at mitigating and overcoming such a situation. Frequent visits to the Montenegrin Serbian Orthodox Church, and constant actions aimed at removing the causes of such a situation, should be regarded in the light of the overall political situation in FRY and the efforts to preserve a common state. The competent authorities of the Republic of Montenegro tolerate both the verbal and the physical attacks on the clergy and the monks, as well as the intrusions into the properties of the Serbian Orthodox Church by adherents of the 'Montenegrin Church'.⁹

In the talks with the representatives of the Serbian Orthodox Church, a permanent theme was the situation in Kosovo and Metohija, where the clergy, monks and believers of the Orthodox faith were exposed to continual religious and ethnically-motivated violence; as indicated above, given that Serbs in Kosovo and Metohija belong to the Orthodox Church, it is not possible to distinguish between the ethnic and the religious violence perpetrated by ethnic Albanians upon Orthodox believers, or any other kind of violence that affects freedom of movement and, thereby, freedom of worship. It should be borne in mind that violence has also been reported against members of other minorities in the region of Kosovo and Metohija (i.e. against Turks, Gorans, Roma).

Assaults by Albanian extremists on buildings of the Serbian Orthodox Church, and their destruction and desecration, are an integral component of the violence being perpetrated on Serbs who are a minority in Kosovo and Metohija, threatening not only their ethnic and religious rights but also the minority rights guaranteed by a whole range of international charters. Furthermore, the oldest and most important monasteries (Peć Patriarchate, Gračanica, Dečani) are under the constant protection of KFOR, which has been entrusted with the task of protecting Serbian patrimony sites in Kosovo and Metohija. KFOR has, however, proposed to UNMIK that this function be taken over by the Kosovo police service.

Had the Law on Denationalisation been passed in 1991 or 1993, and had the post-war revolutionary laws been annulled (the Federal Law on Agrarian Reform and Colonisation of 23 August 1945, and others), the Serbian Orthodox Church would have been given a part of the property belonging to it in the form of land and other fixed and transportable property on the territory of Kosovo and Metohija. This property-

9 Djinovići on 11 and 13 September 2000; the Church of St. John the Baptist on 27 October 2000; Milijevići on 21 November 2000; Cetinje - Vlaška Church on 15 December 2000; Bajice - Church of St. John the Baptist on 18 and 19 January 2001; Bajice 16 February 2001; Cetinje - Church of St. George on Šipur on 11 March 2001. The case of parish priest Radomir Nikčević was well known: he was locked up in a hunger strike in Vlaška Church before trying to protect a religious object of the Serbian Orthodox Church which members of the self-proclaimed 'Montenegrin Church' had sought forcibly to take over (15 December 2000). It is typical of the four leaders of this group that only one was from Montenegro (Lalatović) and that all the others were previously dissatisfied, defrocked clergy from the Serbian Orthodox Church (Pavlović, Cvijić) or from the Ecumenical Patriarchate of Constantinople (Dedeić).

ownership aspect would have been extremely significant both as regards the manner of ordering the territory of Kosovo and Metohija during 2000 and in ensuring the opportunity for the local monasteries of the Serbian Orthodox Church to survive in the economic sense. After the agrarian reform of 1945, out of 900 hectares of arable and non-arable land, only 60 hectares were left with the Peć Patriarchate. Of the remaining hectares, Albanians usurped 55; so that, now, the nuns till only five hectares located adjacent to the walls of the monastery – and they do so exclusively escorted by members of KFOR.

From June 1999 to June 2001, 67 churches, monasteries and shrines were completely destroyed and 40 structures were variously damaged by plunder, arson and desecration (Musnikovo on 1 September 2000; Priština on 22 December 2001; Gornji Livoč on 7 February 2001; Draganac on 8 February 2001; Orahovac in February 2001; amongst others. The destruction of shrines is usually carried out by mine-layers after which, in locations where it is possible, steam shovels and other implements are used to remove all remnants of sites belonging to the Serbian Orthodox Church (for example, the Church of St. Jeremija near Kline; and the Church of St. Nicholas in Opeturuše, near Orahovac).

It happens that KFOR forces have called off the protection of certain religious sites, after which they have passed into the hands of Albanians (in March 2001). Members of the clergy have, on one occasion, been forced to leave a building with three housing units in the centre of Pristina.¹⁰

Thanks to the talks and the meetings with diplomatic and state officials abroad, and to the publication *Crucified Kosovo*, in which precise information has been published about the damaged churches and monasteries and on which territory they are located (i.e. under KFOR military units), and thanks to it being easy to verify every piece of information, it can be concluded that both the world public and the institutions which are competent to monitor the state of religious freedom are now much better informed.¹¹ Consequently, their reports speak increasingly more of the violence being perpetrated against the believers and objects of the Serbian Orthodox Church in Kosovo and Metohija.

On a number of occasions, the Islamic community in Belgrade has had cause to complain of attacks on its religious sites and objects (the Bajrakli Mosque in Jevre-

10 The Federal Ministry for Religious Affairs has regularly visited monasteries in Kosovo and Metohija (Peć, Gračanica, Dečani) and initiated a number of activities to aid the clergy, monks and Serbian Orthodox believers alike in Kosovo and Metohija (food and fuel for monasteries in conjunction with the Federal Committee for Kosovo and Metohija, Goods Reserves Office and others). It has also drawn up reports, made proposals and submitted them to all the relevant officials in the effort to resolve the situation in Kosovo and Metohija (May 2001), and has also contributed to the formation of the Co-ordination Centre. The latter has been an especially important activity, with the representative of FMRA/FSRA, Svetomir Stefanović, playing an active role in the recent elections and in constituting the Assembly in Kosovo.

11 US Department of State/Bureau of Democracy, Human Rights and Labor: *International Religious Freedom Report*, 31 October 2001; Keston Institute; etc.

nova Street), anti-Muslim inscriptions being written on the cemetery in Visnjićeva Street, the theft of vehicles owned by the Islamic religious community or the family of the Belgrade Mufti, and TV broadcasts in which guest speakers have voiced anti-Muslim views or have misinterpreted Muslim teachings.

The FMRA/FSRA has issued a statement condemning such attacks on the Islamic community and has expressed its regret at religious intolerance. Following these incidents, the Ministry of the Interior at the level of the republic has been providing round-the-clock protection for the buildings of the Islamic community in Jevremova Street, while the stolen cars have been found and returned to their owners.

There were no similar complaints from the Mesihat of the Islamic community of Sandžak (Mufti Moamar effendi Zukorlić), while Mufti Demirović, head of the Islamic community in Montenegro, did not attend one of the meetings.

There have been no reports of specific cases of attacks on the clergy, believers or religious objects of the Roman Catholic, Evangelical and Reformed Churches after the October democratic changes although, at the outset of 2000, there were a number of attacks on the religious sites of the Roman Catholic Church in Vojvodina. During the past year, however, there have been no reports of similar incidents. The Roman Catholic Church in Montenegro (Bar Bishopric) does not maintain contact with the FMRA/FSRA, while its representatives have, on several occasions, supported the 'Montenegrin Church' in public statements.

There have been a number of anti-Semitic incidents to which the Federation of Jewish Municipalities and the Belgrade Jewish Municipality have reacted, as has the Israeli Embassy (anti-Semitic pamphlets in Kikinda in January 2001; graffiti on the building of the Jewish Municipality, the synagogue and on monuments in the Jewish cemetery in Belgrade on 13 and 14 February 2001; anti-Semitic inscriptions in the Jewish cemetery in Novi Pazar; an attack on the representative of the Jewish religious community in Subotica on 8 May 2001; TV broadcasts with guest speakers publicly expressing anti-Semitic views; and other such incidents.). The representatives of the Jewish religious community consider that the perpetrators of such acts are extreme nationalist groups and organisations. In talks with these representatives, it transpired that the incident in Subotica was probably not motivated by religious intolerance but by political reasons because the victim had been a lawyer for the opposition during the Milošević regime. However, concern was repeatedly expressed as a result of the unhindered publication and distribution of writings of an anti-Semitic nature and also because of the ineffectiveness of the county prosecutor's office. The FMRA condemned the attacks on the sites of the Jewish community; it held talks with the Israeli ambassador and other diplomats, both Israeli and of other countries; and has done its utmost to support the Belgrade Jewish municipality by condemning acts of religious intolerance.

The smaller religious communities in FRY (Seventh Day Adventists, Baptists, Pentecostals, Jehovah's Witnesses and Hare Krishna members), who actively practise and proselytise,¹² have more than once complained of societal discrimination, attacks

12 See US Department of State: *International Religious Freedom Report*, 31 October 2001.

on their believers and graffiti on their buildings, as well as on the way their religious communities are portrayed on TV and in radio broadcasts, etc (the attack on Roma members of the Pentecostal church in Leskovac on 26 September 2000, which was assumed to have been more ethnic than religious; writing on the building of the Adventists' Faculty of Theology in December 2001; attacks on the members of the Vaishna religious Veda community in Jagodina after a programme on the local TV station on 26 and 27 September 2001; and others). Jehovah's Witnesses have filed a number of charges, both within the country and abroad, because they have been prevented from obtaining a permit from the federal Ministry of the Interior to import their religious literature through the NOLIT publishing firm, and representatives have sent complaints to nearly all the European and world institutions whose jurisdiction includes the monitoring of human rights situations (the OSCE, the EU, the UN, etc), concerning the unlawful refusal of such permits. Consultations between the FMRA and the federal Ministry of the Interior, and a joint meeting with Jehovah's Witness representatives, have led to an agreement under which some of the literature has been imported in return for the withdrawal of the charges.

Representatives of small religious communities have frequently expressed the opinion that the new Law on Religious Freedom would jeopardise their rights of freedom of religion and belief. However, following talks held in particular with the federal Secretariat for religious affairs (Šijaković, Milosavljević and the chief of the team of experts, Prof. Avramović) on 18 December 2001, their doubts and fears have been largely dispelled. The FMRA/FSRA has held a number of separate meetings with the representatives of the smaller religious communities (amongst others, with the Adventists in February 2001; Baptists and the Evangelical Alliance on 29 and 30 August 2001, and again on 18 December 2001; Hare Krishna on 14 August 2001; and Jehovah's Witnesses on 8 November 2001).

It has not been unusual for the smaller religious communities – which have problems in most European countries and in the world – to begin complaining beforehand of being unprotected and harassed, and of inadequate laws even before they have seen them. Sometimes, one gets the impression that some of them do this simply in order to be quoted constantly in the reports of those institutions which monitor the situation of religious freedom across the globe.

Future activities in promoting relations between religious communities in FR Yugoslavia and in the region

In keeping with the process of harmonising Yugoslav legislation with that of the EU, the FMRA/FSRA undertook in January 2001 to draw up a Law on Religious Freedom, at which time a working party was set up to draft a proposal for such a Law designed to regulate relations between the state and the churches and religious communities. After consultations with leading international experts in this field and the verification of legal solutions at a series of international conferences and talks, as well as the acceptance of the concrete suggestions preferred by the heads and representatives of the religious communities, the Draft Law was completed at the end of 2001.

This Law is harmonised with both the European legislation and the pre-Second World War legal situation in Yugoslavia, enabling the maintenance of continuity in our law with respect to the legal status of religious communities in the country. After the Law is passed, all issues touching upon its implementation will be resolved with the participation of experts and the representatives of the religious communities, as was the case when the Law was being drafted, the demand for which led to the idea that the Draft should be verified as regards its compliance with other similar laws. This was subsequently also confirmed at the suggestion of the EU, and attained at the level of the Commission after the meeting of the FRY/EU Consultative Working Group (on 6 November 2001). The adoption of the Law on Religious Freedom will also make it possible to regulate legal matters in other areas to which the Law applies, such as the media presence and presentation of religious communities, an issue closely connected with the Law on Broadcasting in the Republic of Serbia. However, the religious communities firmly believe that a controversial article in the Law should be removed as it restricts religious communities from being founders and owners of media outlets.

The Law on Religious Freedom will also directly affect questions frequently raised by the representatives of the religious communities in connection with the restitution of property and associated compensation issues. It may also open the way to meeting the demands of the religious communities for the revival of the Draft Law on Denationalisation of the property of religious communities dating from 1993, as well as rectifying the injustices caused to religious communities after World War II. One step in this direction has already been taken with the re-instatement of religious education in state schools.

In this context, it is of vital interest to include an item on religions affiliation in the forthcoming population Census so that precise data may be obtained, thus preventing the manipulation of figures. This has been one of the conclusions voiced in meetings with the representatives of religious communities in FRY.

Adoption of the Law on Religious Freedom will guarantee freedom of worship and, concomitantly, everything guaranteed in the major European and international conventions on religious freedom, including the final document of the International Consultative Conference on School Education connected with freedom of belief and conviction, tolerance and non-discrimination (November 2001). This will promote the systematic effort to curb and prevent all forms of intolerance and discrimination on grounds of religious choice.

These are the major topics discussed in talks with the heads of religious communities; in fact, they are the topics in which the representatives of the religious communities have shown most interest in individual and joint meetings.

A considerable improvement has been recorded in just twelve months in the relationship between the state and the religious communities, as well as between these communities themselves, regarding confidence building and constructive co-operation on joint projects.

On the basis of developing co-operation with religious communities in the FR Yugoslavia and with other countries in the region, the FSRA will take steps to organise an international conference of the heads of religious communities in the Balkan re-

gion (south-east Europe). The role of this conference will be to assemble and build confidence among the communities under the authority of the religious leaders. Such a project has already been proposed to the Stability Pact Working Group on human rights. The programme for such a conference should encompass the participation of the religious communities from all the countries in the region – FR of Yugoslavia (including Kosovo and Metohija), Bosnia-Herzegovina, Macedonia, Albania, Bulgaria, Romania, Croatia, Greece, Turkey, Cyprus, Hungary...

The envisaged final agreement and text of a declaration on confidence building, to be signed by the religious heads at the conference, would form the highest authority in the Balkan region for all religious communities and peoples and would undoubtedly help to place the process of stabilisation and reconciliation on a firm and realistic foundation. This alone can guarantee security and a progressive path for the realisation of peace in the Balkans and the integration of the region's countries in the EU.