



RELIGION AND DEMOCRACY: AN EXCHANGE OF EXPERIENCES BETWEEN EAST AND WEST

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The Context and some Dilemmas Concerning the Management of the Legal Studies of Minority Religions in Slovenia

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1. EQUALITY AS A PROBLEM: EMPIRICAL RESEARCH

In February 2003 I conducted a small empirical research study into relations between the State and minority religious communities that have registered their activity in the Republic of Slovenia[1]. I sent to 29 communities simple, semi-open questionnaires divided into three sections according to subject matter. To start with I asked them to make a statement about the current regulation of the status of religious communities in the Slovene legal order and to indicate what (if anything) should be modified in this respect. In the central part of the questionnaire the respondents listed and explained in detail any potential problems in exercising their rights or discharging duties as required by the Slovene legal order in relation to religious communities. I also asked them to distinguish any potential difficulties that they experienced from any alleged violations of their rights, to explain in detail their problems and alleged violations of rights as well as to name potential violators. In the last section of questions an attempt was made to determine the direct effect of alleged problems/violations concerning the rights of minority religious communities on their daily work.

Fourteen or 48.3% of minority religious communities that registered their activities in the Republic of Slovenia responded to my request for cooperation. None of the respondents described the definition of the status, rights and duties of religious communities in the Slovene legal order as unsuitable, but eleven or 78.6% considered that it is only partly suitable. The majority, i.e. twelve communities or 85.7% of the respondents, are convinced that the Slovene legal order would be most suitably amended by modifications (5), supplements (5), adoption (1) or annulment (1) of the Act on the Legal Status of Religious Communities in force (Official Gazette of the Socialist Republic of Slovenia nos. 15/76, 42/86 and the Official Gazette of the Republic of Slovenia 22/91)[2]. Cross-referencing of answers to the question on potential problems in exercising any of the rights/discharging any of the duties prescribed by the legal order and to the request for a detailed explanation of these problems shows that at least ten or 34.5% of the registered minority religious communities, i.e. 71.4% of respondents, are encountering such problems. Only two communities did not link their problems to the violations of rights provided by the Constitution and laws, but instead to the unclear

administrative procedures for the acquisition of residence permits for foreign missionaries. Cross-referencing of data on alleged violations of rights and violators produces the following results:

[TABLE 1]

It is evident from this Table that equality as enshrined in the Constitution recorded the highest share, 85.7%, of the alleged violations of rights; the most or 42.8% of alleged violations were attributed to state bodies. At least seven or 24.1% of registered minority religious communities, or 50% of the respondents in this research, believe that state bodies encroach on their constitutionally guaranteed right to equality.

All of the seven respondents have explained in detail the alleged violation of their equality. In relations with the State they all miss in the first place *(a) equal attention*. They consider that "the Government ignores their demands, applications, dialogue with [minority] religious communities, ... as if we did not exist for [the government Office for Religious Communities]. They send us invitations to meetings and that's it ... The answers that we receive from state bodies, if at all received in writing, clearly show that they are indifferent to and not interested in solving open issues...". Five of them addressed *(b) concrete demands for equal opportunities* to state bodies. "[According to their experience] the Office for Religious Communities is not interested in reimbursing part of the employer's social security contributions for the employees of religious communities ... [The same authority] does not have a sympathetic ear for concluding an agreement between our Church and the State despite several requests from our side; similarly [they established] that chaplaincy service is restricted to only three religious communities". Only one answer can be classified under *(c) abstract demands for absolute or linear equality*[3], i.e. a principled belief that the measures of the executive power should ignore or mitigate the actual differences between religious communities (see Gaspari, 1992). Thus minority religious communities "would not find themselves in an inferior position in relation to certain crucial issues [e.g. obtaining material assistance from the State, consultation in decision-making and participation in official events at the highest level]". The small proportion recorded in this category could shed light on the information that none of the communities claims that the constitutional principle of separation of religious communities from the State has been violated. Minority religious communities therefore do not link their status in relation to state bodies with the fact that "from the standpoint of creating Slovene identity, culture and consciousness no other religious community can be compared to the Catholic Church (Stres, 1998: 36)" and with the topical dialogue between the State and Roman Catholic Church. The elements of a special status of minority religious communities in Slovenia include the information that respondents did not report any problems or alleged violations of their rights that could be associated with the potential activities of Anti-cult groups[4].

2. EQUALITY IN LEGAL ACTS AND POLARIZATION OF OPINIONS

We can establish that the problematic issue concerning the constitutional category of equality of religious communities originates from an unresolved conflict at the start of the process of writing the Slovene constitution. Equality was not mentioned in the first draft "religious article" constituting general provisions in the constitution[5] but was subsequently introduced in this process. Those advocating this proposal explained that "[the constitutional principle of equality] must provide all religious communities with equal opportunities and equal legal bases (Cerar and Perenic, 2001: 311)" or with a certain standard in their relations with the State (see *ibid*). "The meaning of this provision is binding upon the State ... However, this does not imply that they are all financed in the same manner or in the same amount, but that the same legal bases are provided for all religious communities (see *ibid*: 311-2)". There was no explicit opposition to this wording of the constitutional guarantee of equality, nor even a comment from the representative of the Roman Catholic Church. Weaker but polemic objections to the proposal could be detected in opinions maintaining that it is not necessary to spell out equality in the Constitution since it is self-evident, identical to the provision on freedom of activity or indirectly implied in this provision (see *ibid*: 309-11), or that equality might result in unreasonable equalisation of the actual situation of obviously different communities (compare *ibid*: 311). Since the competent parliamentary commission was not able to decide on the final version of the

"religious article" by vote, the result of voting was twice undecided, the present wording[6] was formulated by a group of experts. The Slovene legal order therefore does not distinguish between various organisational types of religious organisations but uses for all of them a uniform term (equal) "religious communities".

The provision on equality was repeated in the Act on the Legal Status of Religious Communities. Slovenia slightly amended the Act adopted from the legal order of the former Socialist Federal Republic of Yugoslavia, which was based on the assumption that everything not explicitly allowed is prohibited. The legal profession has established that the Act is now outdated, incomplete, and in places unconstitutional (see for example Sturm, 2002: 126 and Kaucic, 2002: 77). One of its most controversial particularities is the fact that it does not define the term "religious community", founding criteria or otherwise obligatory procedure for the registration of founding (or the cessation of operations) with the competent state authority. As a direct consequence of this situation the State interprets certain provisions of the Act arbitrarily[7] and even does not implement[8] some of them. With respect to equality, the Act explicitly stipulates that "religious communities, their representatives and members cannot enjoy any special treatment, privileges or special protection (Act on the Legal Status of Religious Communities, 4/2)". This implies the prohibition of positive discrimination. According to some theorists, also this provision "reflects the attitude of the former State towards religious communities (Sturm, 2000: 343)".

The positions of the Roman Catholic Church are closest to the selection of criteria enabling us to differentiate between the exercise of relative equality[9] and positive discrimination of religious communities in the Slovene legal order. Furthermore, the Catholic Church believes that the constitutional principle of equality combined with the principles of freedom of activity and separation from the State (as provided for by Article 7 of the Slovene Constitution) is superfluous since "it only tells us that in relation to *fundamental rights* all religious communities are equal before the law (Stres, 1998: 35) ..., but for the purposes of cooperation [with religious communities] and legislative regulation of certain options for their operation such circumstances as membership size, historical significance or connectedness with the national and cultural identity of a nation should be taken into consideration. These circumstances, of course, do not justify violations or restrictions of freedoms of any other religious community but merely present an argument in favour of the necessity to define more precisely the activities of important churches or religious communities and to legislatively define their cooperation with state bodies should this prove necessary and in the interest of citizens (ibid: 38)".

There has not been yet a direct constitutional review of the principle of equality in Slovenia. However, some theorists have made an attempt to deduce from the constitutional review of the Denationalisation Act (21 November 1991, Official Gazette of the Republic of Slovenia 27/91) and from related issues, *a legal argument* on the special status of one religious community, the majority Roman Catholic Church. According to Sturm (2002: 131) "the Constitutional Court of the Republic of Slovenia did not grant the role of *an institution promoting the common good* to all religious communities. It is evident from the context of its Decision [U-I-107/96 and U-I-121/97] that it refers to churches or religious communities active in Slovenia at the end of WWII and having property, which was nationalised soon after 1945"[10]. This statement is correct since the Constitutional Court did not decide on this issue, namely the promotion of the common good by religious communities, but it granted the role of an institution promoting the common good in a concrete case to "certain churches, religious communities, their orders and institutions" and in this way reasoned the different treatment of an identical actual situation, (no)entitlement to denationalisation of "church" and other property of feudal origin. From the standpoint of state and public interest, private owners of estates of feudal origin "cannot be awarded special status as was the case with religious communities (U-I-121/97)". The promotion of the common good by concrete denationalisation claimants was derived by the Constitutional Court from the special status of *all* religious communities and their promotion of the common good. They perform "an important social function ..., because through their activities they enable the exercise of the human right to profess religion (U-I-326/98: 76)". The additional option that under the term "promotion of the common good" the Constitutional Court would actually understand solely "the situation of being entitled to denationalisation" is fairly remote.

The competitive current of thought believes that "social inequality or differences resulting from different social factors should be distinguished from legal inequality. The equality of rights is the equality of otherwise different, unequal religious communities before the law, hence the same conditions and the same possibilities for all religious communities. Of course, each religious community uses the given possibilities in a different way, depending on the number of its followers, organisation, financial capacity, etc. (Legat-Coz, 2001: 68)". This argument presupposes that under the conditions of constitutionally guaranteed equality and separation from the State, the number of followers cannot serve to establish the criterion of legal distinction or positive discrimination of religious communities. The rights of a legal entity are derived from its personal substratum and the State treats all individuals equally regardless of their religious or other belief. Positive discrimination of the majority Church would constitute an unusual measure, since modern democratic states use it to protect in principle the national, ethnic, language and other minorities. Religious communities have to be treated equally before the law, and this should apply not only between religious communities but also between them and other legal entities (compare Sinkovec, 1997: 219-20).

3. EQUALITY AND REGULATION OF THE RELIGIOUS SPHERE OF THE SLOVENE SOCIETY[11]

Despite its deficiencies, the essential legal basis regulating the activities of religious communities in the Republic of Slovenia has not changed in the past twelve years or since Slovenia proclaimed independence. The reason for this could be found in the priorities given by the legislative and executive powers to other, strategic issues, namely economic development, political and suprastate associations. The key social factors in the society's religious sphere were not aware of the processes that would convince them about the necessity of such action.

The Government started a formal dialogue with religious communities in 1992 with the appointment of an umbrella Mixed Committee for discussions between the Government of the Republic of Slovenia and the Roman Catholic Church in Slovenia. A year later the Government established an Office for Religious Communities. The principal requirement of the Roman Catholic Church in all its discussions with the State was that mutual relations should be regulated by appropriate agreements between the Republic of Slovenia and the Holy See, but the Government insisted on solving "open questions concerning the Roman Catholic Church" at home first. After seven years the two sides[12] managed to reach an agreement on a document that defines the legal status of the Roman Catholic Church and constitutes the basis for bilateral negotiations between states. The Republic of Slovenia and the Holy See initialled the Agreement on the Legal Status of the Roman Catholic Church in December 2001[13]. Several other religious communities joined in the public discussion about the anticipated modification of the legal status of the majority yet equal religious community with their own initiatives to conclude similar agreements. In 2000 the State complied with the demands of the Evangelical Church of the Augsburg confession and concluded an agreement on legal questions. The signed document for the first time formally challenges the constitutionally guaranteed equality of religious communities. The initialled agreement between Slovenia and the Holy See guarantees the Roman Catholic Church the right to be a "legal entity" and the right to "religious-pastoral activities in hospitals, retirement homes and other special institutions". The Evangelical internal agreement speaks of the "legal entity of private law" and merely of "a possibility of religious-pastoral activities" in the mentioned institutions. The different wording of articles enables the Roman Catholic Church to acquire the status in public law and obliges the State to provide conditions for such pastoral activity including potentially the employment of Catholic priests in hospitals. The two documents also differ in the fact that the Evangelical agreement consistently follows the applicable legislation whereas the Catholic one overrides it, at least in the provisions on issues under consideration here. In spite of some written initiatives, the State has not concluded a similar agreement with any other religious community[14]. In 2000 the Government signed respective agreements with the Roman Catholic Church and Evangelical Church on the pastoral care of military personnel in the Slovenian Armed Forces. The Catholic agreement has been underpinned again, since, inter alia, it prejudices the Government's decision (and that of the competent parliamentary committee) on the

signing of a new, partial agreement with the Holy See. Despite numerous formal initiatives expressing the wish to conclude an agreement and establish cooperation, the State has not invited any other religious community to participate in the process of setting up the chaplaincy service. The Roman Catholic and Evangelical chaplains have put on the uniforms of the Slovene Armed Forces in haste and before harmonisation of the adjustment of applicable legislation.

Judging from the articles in daily newspapers, the Slovene Government does not have a proposal for ways to modify or substitute the Act on the Legal Status of Religious Communities in force. It renounced the bill submitted to parliament in 1998, saying it was outdated (see Pusenjak, 2003). The renounced bill in recent years represented the only transparent vision regulating the religious sphere in the Slovene society. It defined the term of religious community as a "voluntary, non-profit association of individuals who congregate on the grounds of a common religious conviction and profession of the same religion in order to perform religious activities", the minimum criteria required for the founding of a religious community as well as simple and voluntary registration in line with the administrative procedure. A review of the unsuitability of such solutions in its essence touches upon the discussion on equality. According to the same source, the Government in this review took note of the proposal of the Catholic Bishops' Conference to define first by law various types of religious communities or religious associations and movements. The Bishops' Conference is of the opinion that religious communities should be differentiated due to significant differences between associations established on the basis of religious or similar convictions. Without justification Slovenia equates unequal and different actual status, which is considered by the Roman Catholic Church to be an indirect form of discrimination. It also expects the Government not to restrict rights granted to the Roman Catholic Church in the signed international agreement (see *ibid*).

The deficiencies of the legal basis are reflected not only in the notion of equality but also in the area of funding of religious communities by the Government. The Office for Religious Communities provides on its web sites information that the State does not directly finance the activities of religious communities, but priests and monks for whom this is the only profession should, however, be entitled to financial support or paid employer's social security contributions^[15]. A petition from the Unification Church addressed to the Human Rights Ombudsman in 2001 revealed that funding is available only to certain communities and allocated without any predetermined criteria and public invitations to tender, which allows for discriminatory treatment of individual religious communities and individual priests^[16].

3. CONCLUSION

The constitutional and legislative regulation of the status of religious communities placed special emphasis on the category of equality at the very beginning, i.e. upon the emergence of an independent and sovereign Republic of Slovenia. The evolution of this category over the past twelve years has led to the actual division of religious communities into: a) a more equal and majority church, b) an equal and socially recognised, "traditional" church, and c) other, equal and marginal (minority) communities. The current attitude of the State towards minority religious communities is primarily characterised by the unilateral disruption of a dialogue initiated by the State itself and institutionalised in the form of the Office for Religious Communities. Nevertheless, the Republic of Slovenia can be still counted among the countries providing (minority) religious communities with a relatively friendly environment. Data on potential negative discrimination of religious communities are not available^[17].

Considering the provisions of the valid legal order, the competitive ideas on how to regulate the Slovene religious sphere can be divided into "reform" and "legalistic" ideas. The first group includes only the interests in partially regulating the status of the majority church, while the second supports simultaneous and non-discriminatory affirmation of the entire religious sphere. The first position is in principle indifferent to the second, until the affirmation of a religious sphere does not imply linear equation of religious communities. The second position does not contradict the first one, since the affirmation of a religious sphere presupposes "positive discrimination" of any religious community according to its special features. Both

positions agree that "[equality before the law] does not prohibit different regulation of the status of legal entities but it prohibits doing so arbitrarily without a sensible and real reason (U-I-68/98: 24)". It may come as a surprise that there is no major conflict between both understandings of equality. Therefore the status of the majority church could be satisfactorily regulated also in conditions of prohibited positive discrimination and in such a way that social distinction of a larger, domestic, correct and healthy religion or community would not trigger the search for small, foreign, mistaken and pathological views or communities. The increasing marginalisation of minority religions by the State may unfortunately represent a step in this direction. An important difference between both sides lies in making sensible and real reasons for a different treatment of religious communities legitimate. The reform current appeals to the majority of Slovenes, to the undoubtedly expressed public interest and immediate action. The legalistic current aims at professional work, careful planning and the catalogue of human rights. It is actually a commonly accepted fact that both positions are growing more and more apart despite their similarities; the core of the former is slowly approaching the administrative, political and public sphere of the society, while the latter remains solely with the academia.

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TABLES:

- Table 1:

ALLEGED VIOLATOR	ALLEGEDLY VIOLATED RIGHT[18]					
	Freedom of activity	Separation from the State	Equality before the law	Other right	None of the rights	Total number of entries
Local community	0	0	1	0	0	1
Anti-cult groups	0	0	0	0	0	0
Another religious community	0	0	2	0	0	2
State bodies	1	0	7	1	0	9
Another legal entity	0	0	1	0	0	1
Media	0	0	5	0	0	5
Police	1	0	0	0	0	1
Other	0	0	2	0	0	2
Nobody	0	0	0	0	4	4

Total number of entries	2	0	18	1	4	25
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[1] In addition to the majority Roman Catholic Church, I also excluded the Evangelical Church of Augsburg confession (The Lutheran Church) from the list of registered religious communities (See <http://www.gov.si/uvs/ang/frames2a.htm>, 31 March 2003). Although less than one percent of Slovene citizens are adherents of the latter, it is given special attention by the State for historical reasons. Following the example of the Roman Catholic Church, the Evangelical Church is the only remaining registered religious community to have signed agreements with the State on the legal status and spiritual care of military personnel; in addition to the Roman Catholic chaplains only an Evangelical chaplain also wears the uniform of the Slovene Armed Forces. On Sundays/holidays the national radio and television broadcast alive solely the Evangelical services in addition to Roman Catholic masses. The Protestant Day of Reformation is the only non-Catholic religious holiday granted the status of a nonworking day by the State.

[2] See <http://www.gov.si/uvs/zakonb.htm> (31 March 2003). Unfortunately, the Act has not been translated.

[3] This analytical sub-category in the perception of constitutionally guaranteed equality prevails when respondents address their reproach for alleged violation to the media (five or 17.2% of registered minority religious communities). For they believe, for example, that "the Roman Catholic Church is dominant in the media, which they claim is wrong; that the religious programme of RTV Slovenia is exclusively Catholic oriented and presents other religions only marginally and unprofessionally," or that "they in general report about religion and spirituality in a negative sense, in a sensationalist and one-sided manner". These answers confirm the fact that in the Slovene media minority religious communities are relatively rarely labelled with negative stereotypes, e.g. being labelled as "cults" or "sects".

[4] In Slovenia the reception of contemporary anticultism is eclectic, non-reflective and dispersed, therefore hardly receiving notice. The only systematic work, a book by Catholic priest Vinko Skafar (1999): "Religions, Sects and New Age Movements" (Celje: Mohorjeva druzba), reveals the obvious absence of any field work carried out among new religions.

[5] Article 5 of the Draft Constitution of the Republic of Slovenia (12 October 1990) stipulated that "Church shall be separate from the State. Religious communities shall pursue their activities freely. OPTION: Second paragraph is deleted".

[6] See Note no. 3.

[7] Due to unidentified criteria for the founding of a religious community and the obligatory registration with the competent state authority, the registration of a group of persons who wish to register themselves as a religious community cannot be denied (see Sturm, 2002:66) but simultaneously an arbitrary decision not to register a group that is for any reason whatsoever controversial remains possible, even though the application was not rejected; in the registration procedure a religious community does not have the right to appeal. According to the data of the Office for Religious Communities (see <http://www.gov.si/uvs/verske.htm>, 31 March 2003) the number of registered religious communities was slowly increasing before and after Slovenia gained independence, but no community has successfully concluded the registration procedure since 1999.

[8] If a religious community fails to register its foundation or cessation of operations in accordance with the Act on the Legal Status of Religious Communities, a fine or a prison sentence for a maximum of 15 days may be imposed on the responsible person (Act on the Legal Status of Religious Communities 21/b2). The State does not implement this provision, so that in practice religious communities are free to choose between any formal or informal organisational structure. The actual number of religious communities in Slovenia therefore exceeds several times the number of those registered.

[9] Contemporary legal theory has established that equality before the law can no longer be interpreted as absolute or linear equality but as relative equality, or [in such a way] that equality before the law imposes an obligation on legislators to treat similar positions equally and different positions differently (see Gaspari, 1992).

[10] The problem of denationalisation of the former feudal estates emerged in the independent Slovenia at the end of the second millennium because the anti-feudal agrarian reform carried out by the Kingdom of Yugoslavia, encompassing also Slovenia before WWII, was not entirely successful. After 1945 such property was nationalised by Slovenia's predecessor State, the former Socialist Federal Republic of Yugoslavia. The Slovene Constitutional Court established that estates originating from the former feudal relations are not in their nature compatible with the notion of a republic as a form of a state and with the notion of a democratic state. In light of this, it decided that the legal restriction (under consideration at that time) placed on restitution of such property is not constitutionally controversial. It took into consideration the fact that

part of "church property" was undoubtedly of feudal origin, but nevertheless " with respect to their role of *an institution promoting the common good* and their *status in the Slovene legal order*, churches and religious communities when they are claimants in the denationalisation process cannot be equated with estates of feudal origin or with ownership relations arising from historically expressed feudal relations ... (U-I-107/96: 28)".

[11] For details see also Crnic and Lesjak, 2003.

[12] Stuhec, 2002, for example, summarised the view of the Roman Catholic Church on its status in the Slovene state and society.

[13] Before ratification in the parliament the Government of the Republic of Slovenia sent it to the Constitutional Court for review. The decision is still pending.

[14] Written initiatives to conclude similar agreements with the State were submitted by the Serbian Orthodox Church, the Pentecostal Church, the Jewish Community and the Sacrament of Transition.

[15] Compare <http://www.gov.si/uvs/ang/StateAndReligiousCommunities.htm> (31 March 2003).

[16] The Unification Church addressed its petition to the Human Rights Ombudsman because it did not receive a written reply to its application for assistance to the person concerned from the competent state authority, the Office for Religious Communities. In February 2003 the State reimbursed 42% of funds for social insurance to five members of the Serbian Orthodox Church, seven members of the Pentecostal Church, ten members of The Christian Adventist Church, ten members of the Evangelical Church, eleven members of the Islamic community and 1,077 members of the Roman Catholic Church (see Cepin-Cander, 2003). The report of the Human Rights Ombudsman for 2001 is available in English (See <http://www.varuh-rs.si/>, 31 March 2003).

[17] In the research two respondents reported alleged violations of the right to pursue religious activities freely. The first respondent described as a violation "two-and-a-half hours long intimidation at the Office for Religious Communities" during which the Office explained that religious communities cannot perform activities for profit according to the valid legislation. This discussion did not have any direct consequences, e.g. report to the competent inspection service. The second respondent reported that the Police several times interrupted or disrupted the initiation ritual of his community. In this ritual they use ibogain, a psychoactive drug extracted from the root bark of an African shrub (*Tabernanthe iboga*) and used by some African tribes for initiation purposes. This drug is not prohibited in Slovenia.

[18] The closed section of the questionnaire offered in advance only the possibility to choose rights guaranteed to religious communities in Article 7 of the Constitution of the Republic of Slovenia (See <http://www.us-rs.si/en/index/html>, 31 March 2003). The Article reads: "The state and religious communities shall be separate. Religious communities shall enjoy equal rights; they shall pursue their activities freely". The Constitution of the Republic of Slovenia was adopted on 23 December 1991.

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