

ORIGINALNI NAUČNI ČLANAK

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## NEITHER SECULAR STATE NOR LAICAL REPUBLIC?

### LEGAL POSITION OF RELIGIOUS COMMUNITIES IN COMMUNIST YUGOSLAVIA – LEGAL FRAMEWORK ANALYSIS\*\*

***Abstract:** The paper is a contribution to a scholarly debate on the controversial secular nature of the communist state. It aims to challenge a presumed affiliation of Yugoslav communist model of church and state separation to French laical approach through examination of legal status of religious communities in Yugoslavia between 1946 and 1991. Methodologically restricted to a normative analysis of basic legal framework, the paper particularly sheds light on religious liberty, religious education and public funding of religious communities. It detects signs of evolution in official legal politics towards religion and emphasizes differences between the eight parallel Yugoslav legal systems that existed since the mid-seventies. Strictly analytical, the achieved results justify plausibility of starting presumption without pretending to give a final answer. As such, the paper presents a groundwork for further enquiries that would combine its normative findings with relevant sociological and historical data.*

**Key words:** secularism, laicism, communism, Yugoslavia, legal status of religious communities, religious liberty, state and church relation.

## INTRODUCTION

Was communist state a secular one?

Official separation of communist state and church, as well as a resolute ban of religious education at state schools can render that impression;

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as an officially neutral state in matters of religion, a communist state could be the one that successfully avoided discrimination based on religious beliefs and treated all its citizens equally. On the other hand, by its definition, the secular state supports neither religion nor irreligion. Yet, Marxist “scientific atheism”, as the ruling-party’s official ideology in all communist countries, was openly anti-clerical and condemned the religion as such. It denounced it to be “the opium of the people” since it was seen as promoting passive acceptance of human suffering in poverty and capitalist exploitation. In other words, the separation of state and church in communist constitutions could have been easily used not in order to avoid discrimination based on beliefs, but quite the opposite: as a legal means for the promotion of a single belief – that there is no God.

Was then a communist state secular or not? The question is not only of historical relevance: its answer helps to outline the definition of what a secular state is, or at least, what it is not. The point of this paper is to contribute to this scholarly debate by examining the Yugoslav experience, that has recently started to be affiliated with French laical approach, rather than with the secular one. Tempting, but still questionable, this hypothesis may be tested on legal status of religious communities in communist Yugoslavia. A legal framework analyses of this legal regime is, of course, only a first step of one more thorough task: no seriously examined legal regime can be taken out of its historical context or properly understood without comprehending its following jurisprudence. Thus, this paper offers no more than an initial methodological basis for further enquiries. Modest as it is, it is still needed. Namely, if the relevant Yugoslav legislation in this field has already been discussed in many aspects, most of previous studies are affected by the same methodological deficiency: incomplete insight of basic legal framework they presume to comment.

## 1. ONE COUNTRY, EIGHT SYSTEMS

As a federal state, communist Yugoslavia was composed of six federated states, or so called “republics”. This constitutional constellation would be seriously reformed by a series of constitutional amendments that were enacted since the late 1960s. The culmination of this process was the last Yugoslav Constitution of 1974. It tended to transform the federation into confederation and joined the two autonomous provinces of Serbia – Vojvodina and Kosovo – to the club of six republics, as the seventh and the eighth Yugoslav federated entities. As a result of these institutional changes, the competencies in the matter of legal status of religious communities were transferred from the federal state to republics and provinces.

Accordingly, in communist Yugoslavia, there was not a single one, but two basic legal regimes on state/church relationship. The first one, previous to 1974 constitutional changes had generally been based on the first (1946) and the second (1963) Yugoslav constitution<sup>1</sup>, and especially on the 1953 federal statute<sup>2</sup> that was amended in 1965<sup>3</sup>. The second regime, based on the third and the last Yugoslav constitution of 1974<sup>4</sup> was far more complicated. It did not include any federal regulation but eight parallel legislations of eight federated entities<sup>5</sup>. However, Yugoslav legal system in this

- 1 Art. 25 of Federative People Republic of Yugoslavia (FPRY) Constitution, *Službeni list FNRJ* [Official Gazette of FPRY], n° 10/1946, p. 73 and Art. 46 of Socialist Federative Republic of Yugoslavia (SFRY), *Službeni list SFRJ* [Official Gazette of SFRY], n° 14/1963, p. 261. Both Yugoslav constitutions were followed by a series of six republic constitutions. While all of 1946 republic constitutions retook verbatim stipulations from the article 25 of the Federal one (Art. 26 of Serbian Constitution, Art. 26 of Bosnian Constitution, Art. 26 of Croatian Constitution, Art. 24 of Macedonian Constitution, Art. 24 of Slovenian Constitution and Art. 25 of Montenegrin Constitution; According to *Ustav FNRJ i Ustavi narodnih republika*, 1950, Beograd, *Službeni list FNRJ*), republic constitutions of 1963 did not contain any guaranties on human rights and liberties.
- 2 Zakon o pravnom položaju vjerskih zajednica [Statute on legal status of religious communities], *Službeni list FNRJ* [Official Gazette of FPRY], n° 22/1953, pp. 209–210.
- 3 Zakon o izmjenama i dopunama Zakona o pravnom položaju vjerskih zajednica [Statute on legal status of religious communities Amendments], *Službeni list FNRJ* [Official Gazette of FPRY], n° 10/1965, pp. 295–296.
- 4 Art 174 of Socialist Federative Republic of Yugoslavia (SFRY) Constitution, *Službeni list SFRJ* [Official Gazette of SFRY], n° 9/1974, p. 209. Eight republic and province constitutions that followed the federal one, retook verbatim the stipulations from the article 174 (Art 197 of Serbian Constitution, Art 184 of Bosnian Constitution, Art. 258 of Croatian Constitution, Art. 225 of Macedonian Constitution, Art. 229 of Slovenian Constitution, Art. 200 of Montenegrin Constitution, Art. 197 of Vojvodina Constitution and Art. 190 of Kosovo Constitution; According to Geršković L. *et al.*, 1974, *Ustavi i ustavni zakoni*, Zagreb, Informator).
- 5 Закон о правном положају верских заједница [Statute on legal status of religious communities], *Службени гласник СР Србије* [Official Gazette of SR Serbia], n° 44/1977, pp. 2233–2236; Закон о правном положају вјерских заједница, *Народне новине* [People's newspapers], n° 14/1978, pp. 282–283 and n° 52/1988, p. 757; Закон о правном положају верских skupnosti v Socialistični republiki Sloveniji, *Uradni list SR Slovenije* [Official Gazette of SR Slovenia], n° 15/1976, pp. 794–796 and n° 42/1986, p. 2908; Закон о правном положају вјерских заједница, *Службени лист Босне и Херцеговине* [Official Gazette of SR Bosnia and Herzegovina], n° 36/1976, pp. 1202–1204; Закон за правната положба за верските заедници, *Службен весник на СРМ* [Official Gazette of SR Macedonia], n° 39/1977, pp. 860–862; Закон о правном положају вјерских заједница, *Службени листи СР Црне Горе* [Official Gazette of SR Montenegro], n° 9/1977, pp. 102–104; Закон о правном положају верских заједница, *Службени листи САП Војводине* [Official Gazette of SAP Vojvodina], n° 18/1976, pp. 615–617; Закон о правном положају верских заједница, *Службени листи САП Косова* [Official Gazette of SAP Kosovo], n° 10/1977, pp. 255–257.

field had known certain degree of legal particularism even prior to 1974. Namely, the article 21 of 1953 federal statute had granted both federal and republic governments with the authority to carry out its legal provisions by their autonomous interior regulations<sup>6</sup> that would be enacted in the early sixties<sup>7</sup>.

The following text will try to compare these two legal regimes in order to, firstly, indicate signs of possible evolution that took place from 1946 to 1974, and secondly, to emphasize differences among eight parallel Yugoslav legal systems that had existed since the mid-seventies and, to a lesser extent, since the early sixties.

## 2. RELIGIOUS FREEDOM

### FREEDOM OF WORSHIP

All three Yugoslav constitutions from the communist period explicitly guaranteed the freedom of worship and other religious affairs, but unlike the first one of 1946, two latter constitutional acts did not explicitly reserve this freedom only to those religious communities whose “doctrine is not contrary to the Constitution”<sup>8</sup>.

However, according to article 13 of 1953 Federal Statute, collective religious practice is quite space limited: free public worship is possible only in religious facilities or accessory spaces such as church yards or cemeteries, but could be interdicted by an act of local administrative bodies motivated by the protection of public health or order. Collective religious practice and affairs performed beyond this facility, i.e. in public space,

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6 According to Radmila Radić, Federal government had intended to enact its regulation in 1955, but this attempt aborted notwithstanding that some text had been initially adopted. After the second failure in 1960, Federal government finally abandoned this project and let republic governments enact their own regulations. Radić, R., 2002, *Država i verske zajednice: 1945–1970*, Vol. I, Beograd, INIS, pp. 419–421.

7 Уредба за извршење Закона о правном положају верских заједница, *Службени листник НР Србије* [Official Gazette of PR Serbia], n° 10/1962, pp. 137–139; Уредба за извршење Закона о правном положају вјерских заједница, *Народне новине* [People’s newspapers], n° 30/1961, pp. 187–189; Уредба за извршење Закона о правном положају вјерских заједница, *Службени лист НР Босне и Херцеговине* [Official Gazette of PR Bosnia and Herzegovina], n° 16/1961, pp. 79–80; Уредба за извршување на одделни одредби од Законот за правната положба на верските заедници, *Службени весник НР Македонија* [Official Gazette of PR Macedonia], n° 26/1961, pp. 401–403; Уредба за извршевање закона о правном положају верских skupnosti, *Урадни лист LJР Slovenije* [Official Gazette of PR Slovenia], n° 20/1961, pp. 281–282. Montenegro did not enact its interior regulation.

8 1946 Constitution, Art. 25, line 3.

like Roman catholic processions or Orthodox litanies needed a previous administrative authorization unless it was a private celebration such as a funeral or a wedding. There is another exception: persons who live or permanently stay in hospital, nursing home, boarding school or other similar institutions may practice religion on their own or with the assistance of a religious servant, but only at personal demand and with due respect for the institution's House Rules<sup>9</sup>.

These federal provisions were elaborated in internal legislations in the early 1960s in different ways. While Serbian 1962 regulation had expanded the meaning of “accessory spaces” of free worship on “those places where there had once stood a church or a temple and have since ancient times been commonly known and considered as places of worship on specific days, as well as those places which are commonly used as a place of worship on specific days because there is no local church or temple nearby”<sup>10</sup>, other interior regulations allowed no outdoor exceptions beyond the limits envisaged by Federal Statute. Contrarily, all interior regulations except the Serbian one specified that as a graveyard – as a public space of free worship – could be considered any cemetery whether it is or is not situated alongside a church<sup>11</sup>. The common feature of all those interior regulations is the establishment of police competency and of detailed procedures concerning the declaration of religious facilities in use<sup>12</sup> as well as the authorization of outdoor religious performances<sup>13</sup>. Croatian, Macedonian and Bosnian regulations explicitly gave discretionary powers to police authority in this matter<sup>14</sup>. On the other hand, only Slovenian interior regulation considers the silence of administration as a tacit approval<sup>15</sup>.

9 ZPPVZ, *Sl. list FNRJ*, n° 22/1953, Art. 16.

10 УИЗППВЗ, *Сл. гласник НРС*, n° 10/1962, Art 2, line 4. However, the same text insisted on previous police authorization for allowing this exception. (“Mesta na kojima je nekada postojala crkva odnosno hram a od davnina je uobičajeno i opštepoznato da se na tim mestima u određene dane vrše verski obredi, a takođe i mesta na kojima je uobičajeno vršenje verskih obreda u određene dane zbog toga što na okolnom širem području nema crkve odnosno hrama.”)

11 UIZPPVZ, *Nar. novine*, n° 30/1961, Art. 2; UIZPPVZ, *Sl. list NRBH*, n° 16/1961, Art. 2, line 3; УИЗООЗППВЗ, *Сл. весник НРМ*, n° 26/1961, Art. 2, line 4 and UIZPPVS, *Ur. List LJRS*, n° 20/1961, Art. 3.

12 UIZPPVZ, *Nar. novine*, n° 30/1961, Art. 1; УИЗППВЗ, *Сл. гласник НРС*, n° 10/1962, Art. 2, line 5; УИЗООЗППВЗ, *Сл. весник НРМ*, n° 26/1961, Art. 2, line 5; UIZPPVZ, *Sl. list NRBH*, n° 16/1961, Art. 2 and UIZPPVS, *Ur. List LJRS*, n° 20/1961, Art. 1.

13 UIZPPVZ, *Nar. novine*, n° 30/1961, Art. 3; UIZPPVZ, *Sl. list NRBH*, n° 16/1961, Art. 3; УИЗППВЗ, *Сл. гласник НРС*, n° 10/1962, Art. 3; УИЗООЗППВЗ, *Сл. весник НРМ*, n° 26/1961, Art. 3 and UIZPPVS, *Ur. List LJRS*, n° 20/1961, Art. 4.

14 UIZPPVZ, *Nar. novine*, n° 30/1961, Art. 3, the last line.

15 UIZPPVS, *Ur. List LJRS*, n° 20/1961, Art. 4, line 2. This stipulation would remain the part of 1976 Slovenian Statute (ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 13).

After 1974, Croatian and Serbian lawmakers, as well as lawmakers in both autonomous provinces, replaced this regime of police authorization with simple previous declaration of believers gathering<sup>16</sup>.

In all other aspects of this freedom, legislations from the mid-1970s did not digress much from these earlier Yugoslav stipulations. Nevertheless, there is an evident tendency towards introducing more rigorous police penalties: while interior regulations from the early 1960s had sanctioned non-authorized processions and worship outside of registered religious facilities by important fines and detention no longer than 15 days<sup>17</sup>, new statutes increased this period to 30<sup>18</sup>. The only, albeit important exception was Slovenian Statute which provided small fines and no sanction at all for non-authorized procession<sup>19</sup>. Yet, there were also some improvements: the two western Yugoslav republics allowed priests' presence in hospitals and other similar institutions not only at beneficiary personal demand, but also at demand of family members<sup>20</sup>. Furthermore, some republics and both provinces additionally protected this right by providing penalties for the boarding institutions and persons who failed in observance of these provisions<sup>21</sup>.

16 ZPPVZ, *Nar. novine*, n° 14/1978, Art. 15, line 3; ЗППВЗ, *Сл. гласник СРС*, n° 44/1977, Art. 14; ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 10 and ЗППВЗ, *Сл. листи САПК*, n° 10/1977, Art. 6. All other legislations kept the regime of police authorization: ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 12; ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 16; ЗППВЗ, *Сл. листи СРЦГ*, n° 9/1977, Art. 11 and ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 13.

17 УИЗППВЗ, *Сл. гласник НРС*, n° 10/1962, Art. 14, line 2; УИЗППВЗ, *Nar. novine*, n° 30/1961, Art. 21, lines 1 and 8 and УИЗООЗППВЗ, *Сл. весник НРМ*, n° 26/1961, Art. 8, line 2 and УИЗППВЗ, *Sl. list NRBiH*, n° 16/1961, Art. 9, line 1. Curiously, Slovenian interior regulation did not provide any penalties.

18 ZPPVZ, *Nar. novine*, n° 14/1978, Art. 24, line 3; ЗППВЗ, *Сл. гласник СРС*, n° 44/1977, Art. 36, line 2; ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 31, line 3; ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 32, line 1; ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 23, line 2 and ЗППВЗ, *Сл. листи САПК*, n° 10/1977, Art. 28, line 2. Montenegrin Statute (ЗППВЗ, *Сл. листи СРЦГ*, n° 9/1977, Art. 25, line 2) and Vojvodina Statute (ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 23, line 2) provided an important fine.

19 ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 21, line Č, point 1.

20 ZPPVZ, *Nar. novine*, n° 14/1978, Art. 6 and ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 16.

21 ЗППВЗ, *Сл. листи СРЦГ*, n° 9/1977, Art. 27 and ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 25. Bosnian Statute (ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 32, line 2) and Macedonian Statute (ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 32, line 3) provided penalties only for responsible persons of boarding institutions. Slovenian Statute sanctioned (by medium fines) the performance of religious rites when it disturbed or violated House Rule of boarding institutions (ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 21, line C, point 2). Serbian Statute sanctioned both infractions (ЗППВЗ, *Сл. гласник СРС*, n° 44/1977, Art. 38, line 9) by small fines.

It is noteworthy that, while Serbian and Macedonian regulations from the early 1960s asked for police authorization from every foreign citizen who intended to perform a religious service on their soil, Croatian and Slovenian regulations did not pronounce on this matter<sup>22</sup>. Later, this specific Serbian and Macedonian restriction became a more general feature of Yugoslav communist legal politics since all republics and provinces – with conspicuous Croatian and Slovenian exception – would incorporate it in their legislations in the mid-1970s<sup>23</sup>.

## WEDDINGS AND INITIATIONS ACTS

According to 1953 Federal Statute initiation rituals like the Christian baptism or Muslim circumcision can be performed only at the demand of one of the parents or legal guardians and with the consent of the child 10 years of age<sup>24</sup>. The act of baptism is legal only after a civil birth certificate has been already obtained, in the same way as a church wedding is conditioned by previous civil registration<sup>25</sup>. All interior regulations from the early 1960s, except the Serbian one, required a written demand of a parent or a guardian asking for the permission to baptize the child, unless the latter intended to personally assist in the ceremony. Particular police authorization was needed for baptizing on the riverside<sup>26</sup>. All Yugoslav republics, except Slovenia, did not regulate acts of baptism or circumcision when they are performed at the believer's home<sup>27</sup>.

In general, the legislations from mid-1970s relaxed this matter: only Montenegrin, Kosovo and Macedonian statutes continue to insist on the priority of civil birth certificate over these two initiation acts. Montenegrin, Vojvodina and Bosnian statutes moved the age limit for a minor's consent, which is henceforth compulsory only if the child in question is

22 УИЗППВЗ, *Сл. гласник НРС*, n° 10/1962, Art. 5 and УИЗООЗППВЗ, *Сл. весник НРМ*, n° 26/1961, Art. 5.

23 ЗППВЗ, *Сл. гласник СРС*, n° 44/1977, Art. 18; ЗППВЗ, *Сл. лист СРЦГ*, n° 9/1977, Art. 16; ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 18; ZPPVZ, *Sl. list BiH*, n° 36/1976, Art. 17; ЗППВЗ, *Сл. лист САПК*, n° 10/1977, Art. 10 and ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 13. Unlike all other above-mentioned Yugoslav entities, Montenegro did not provide any police penalties for the violation of this provision.

24 ZPPVZ, *Sl. list FNRJ*, n° 22/1953, Art. 14.

25 ZPPVZ, *Sl. list FNRJ*, n° 22/1953, Art. 15.

26 UIZPPVZ, *Nar. novine*, n° 30/1961, Art. 6; УИЗООЗППВЗ, *Сл. весник НРМ*, n° 26/1961, Art. 4, line 5; UIZPPVS, *Ur. List LJRS*, n° 20/1961, Art. 6.

27 UIZPPVZ, *Nar. novine*, n° 30/1961, Art. 5, УИЗППВЗ, *Сл. гласник НРС*, n° 10/1962, Art. 4; УИЗООЗППВЗ, *Сл. весник НРМ*, n° 26/1961, Art. 4, line 4 and UIZPPVZ, *Sl. list NRBIH*, n° 16/1961, Art 4, line 2.

fourteen years old<sup>28</sup>, while Croatian Statute did not ask for the child's consent at all<sup>29</sup>, and Slovenian Statute did not pronounce on this issue any more. Macedonian Statute kept the same age limit for the act of circumcision but said nothing about baptism<sup>30</sup>. Only Serbia and Kosovo stayed on the more restricted line of 1953 Federal Statute making it even more severe with some new requirements such as appropriate hygienical conditions for performing these health sensitive acts<sup>31</sup>. Finally, it is interesting to notice that the priority of civil over the church marriage completely disappeared from Croatian and Vojvodina legislations. Besides, statutes of these two federated entities had depenalized transgressions of all these provisions, while the other Yugoslav entities continued to sanction them, though mostly in less restrictive way<sup>32</sup>.

### RIGHT TO HOLD AND TO MANIFEST RELIGION

Unlike Yugoslav constitutions which explicitly mentioned only the freedom of worship and of religious affairs, Federal Statute of 1953 and republic and province statutes from the mid-1970's were more eloquent. Although similar in structure, these legal texts were not identical. Federal text of 1953 was the most elaborated and starts with the guarantee of a person's freedom to be or not to be a member of a religious community. Precisely, the article 6 of 1953 Statute says that "no person may be any way forced to become member of religious community, to remain member of such a community or to leave it"<sup>33</sup>, which emphasized rather the freedom not to be, than to be a member of a religious community. Similarly, the next two lines of the same article guaranteed a free manifestation of reli-

28 ЗППВЗ, *Сл. листи СРЦГ*, n° 9/1977, Art. 12; ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 13 and ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 11.

29 ZPPVZ, *Nar. novine*, n° 14/1978, Art. 22.

30 ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 28.

31 ЗППВЗ, *Сл. гласник СРС*, n° 44/1977, ЗППВЗ, *Сл. листи САПК*, n° 10/1977, Art. 16 and Art. 8.

32 Serbia, Kosovo and Bosnia penalized violation of provisions on wedding, baptism and circumcision with small fines (ЗППВЗ, *Сл. гласник СРС*, n° 44/1977, Art. 38, lines 2 and 3; ЗППВЗ, *Сл. листи САПК*, n° 10/1977, Art. 30, lines 1 and 2 and ZPPVZ, *Sl. List BiH*, n° 36/1976 Art. 33, lines 1 and 2), Montenegro and Vojvodina sanctioned only the provisions on baptism and circumcision by medium fine (ЗППВЗ, *Сл. листи СРЦГ*, n° 9/1977, Art. 26, line 2 and ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 24, line 3) as well as Macedonian but in a more rigorous way, providing a penalty of confinement up to 30 days (ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 31, line 5). Slovenian and Croatian Statute did not provide any penalties for these provisions.

33 "Nitko ne može na bilo koji način biti prisiljen da postane član neke vjerske zajednice, da ostane član takve zajednice ili da iz nje istupi."



gion in community with others by confirming firstly, that “no person may in any way be forced to participate in religious rites, processions and other manifestations of religious feelings”<sup>34</sup>, and only after that, more affirmatively states that “no person may forbid citizens to participate in religious rites, processions and other manifestations of religious feelings”<sup>35</sup>. But, while the first two lines assured the protection to everyone, the last line guaranteed a free manifestation of religious feelings only to Yugoslav citizens. The last, but surely not the least interesting stipulation is the fourth line of article 6 which said that “no person may force a member of a religious community not to exercise the rights that he enjoys as a citizen according to the Constitution and laws”<sup>36</sup>.

This federal text would be taken verbatim by Montenegrin, Macedonian and Slovenian statutes from mid-1970s<sup>37</sup>. Croatian, Serbian, Bosnian, and Kosovo statutes were almost identical with the Federal model, but distinctive in a single common point: a different attitude to the last stipulation of article 6. Actually, Serbian, Bosnian and Kosovo statutes simply deleted it<sup>38</sup>, while Croatian Statute kept it in another form that considerably relativized the very idea of earlier federal stipulation. To be specific, Croatian Statute ruled that “no one may force *nor disenable* a member of a religious community not to use the rights that belong to him according to the Constitution and laws”<sup>39</sup>. Vojvodina Statute did not elaborate on this freedom at all, but simply states that “the right of every man is to belong or not to belong to a religious community”<sup>40</sup>. Vojvodina Statute alongside the Montenegrin, was the only one that did not provide any police penalties for violation of these provisions<sup>41</sup>.

34 “Nitko ne može na bilo koji način biti prisiljen da učestvuje u vjerskim obredima, procesijama i drugim očitovanjima vjerskih osjećaja.”

35 “Nitko ne može zabraniti građanima da učestvuju u vjerskim obredima i drugim očitovanjima vjerskih osjećaja.”

36 “Nitko ne može prisiliti člana vjerske zajednice da ne koristi prava koja mu kao građaninu pripadaju po Ustavu i zakonu.”

37 ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 8; ЗППВЗ, *Сл. лист ЦРЦГ*, n° 9/1977, Art. 7 and ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 5.

38 ЗППВЗ, *Сл. гласник СРС*, n° 44/1977, Art. 5, ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 7 and ЗППВЗ, *Сл. лист САПК*, n° 10/1977, Art. 2.

39 ZPPVZ, *Nar. novine*, n° 14/1978, Art. 4, line 2 (“Nitko ne smije prisiljavati niti onemogućavati pripadnika vjerske zajednice da ne koristi prava koja mu pripadaju po Ustavu i zakonima”).

40 ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 2.

41 All other republics and provinces had protected free manifestation of religious beliefs by confinement of 60 days (ZPPVZ, *Nar. novine*, n° 14/1978, Art. 23, line 1; ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 21, line 2; ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 30, line 4; ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 31, line 5) or 30 days (ЗППВЗ, *Сл.*

## ANTI-DISCRIMINATION CLAUSE

Federal statute of 1953 also contained anti-discriminatory provisions. Article 7 explicitly said that “Citizens must not be limited in their legal rights because of their religious beliefs, affiliation to any religion or religious community, nor because of their participation in religious rites or any other manifestation of religious feelings”<sup>42</sup>. The second line of the same article forbids establishment of “specific advantages, privileges or specific protections”<sup>43</sup> in favor of religious communities, their servants and members. The third line, implicitly eliminates the conscientious objection since it declares that “Affiliation to a certain religious community or religious beliefs does not exempt anyone of general citizens duties, military or other obligations that citizens have to execute according to law”<sup>44</sup>.

All but one Yugoslav republic decided to keep the same anti-discriminatory provisions in their statutes from mid-1970s<sup>45</sup>. It was Serbia that markedly did not forbid privileges or conscientious objection, and kept only a general anti-discriminatory norm<sup>46</sup>. These Serbian anti-discriminatory legal provisions were in force in both autonomous provinces due to specific rules on division of competencies between Serbia and its two autonomous provinces. Consequently, Vojvodina and Kosovo statutes did not contain similar provisions<sup>47</sup>. Only four Yugoslav republics provided specific police penalties (up to 60 days of imprisonment) for these kind of discriminatory acts<sup>48</sup>.

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*гласник СРС*, n° 44/1977, Art. 36, line 1 and ЗППВЗ, *Сл. листи САПК*, n° 10/1977, Art. 28, line 1). Only two legislations protected the freedom to change or not to change religion (ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 30, line 5 and ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 31, line 6).

42 “Грађани не могу бити ограничени у правима која им припадају по закону због својих вјерских увјерења, због припадности некој вјероисповести или некој вјерској заједници, или због учествовања у вршењу вјерских обреда и другим очитовањима вјерских осећања.”

43 “Посебне предности, привилегије или посебну заштиту.”

44 “Припадништво некој вјерској заједници или исповједанју неке вјере никог не ослобађа од опћих грађанских, војних или других дужности које грађани морају вршити на основу закона.”

45 ZPPVZ, *Nar. novine*, n° 14/1978, Art. 5; ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 8; ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 6; ЗППВЗ, *Сл. листи СРЦГ*, n° 9/1977, Art. 8 and ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 4.

46 ЗППВЗ, *Сл. гласник СРС*, n° 44/1977, Art. 6.

47 ЗППВЗ, *Сл. гласник СРС*, n° 44/1977, Art. 39.

48 ZPPVZ, *Nar. novine*, n° 14/1978, Art. 23, line 1; ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 21, line A) point 3; ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 31, line 7 and ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 30, line 1.

## POLITICAL ABUSE OF RELIGION

All three Yugoslav constitutions contained a general prohibition of political abuse of religion. This prohibition was stricter in the 1946 constitutional act since it referred to abuse of both, the church – as an institutional – and religion – as a phenomenon – and explicitly forbade the existence of political organizations established on religious basis. The constitutional acts of 1963 and of 1974, in their articles 46 and 176 respectively, declared as unconstitutional the use of religion and religious activities for political ends, but they did not explicitly include an interdiction of confessional political organizations.

Federal Statute of 1953 also contained a general prohibition of any political abuse of religion, or, precisely, of “religious institutions, religious affairs, religious rituals, religious press, religious instruction and other forms of manifestation of religious feelings”<sup>49</sup>. This general prohibition was followed by another one that specifically interdicted “provocation and encouragement of religious intolerance, hatred or discord”<sup>50</sup>. With some differences in style, all republic and province statutes from the mid-1970s (excepting Vojvodina one) adopted the prohibition similar to the federal one<sup>51</sup> but neither of them protected it with specific police penalties<sup>52</sup>.

After 1974 all Yugoslav entities, excepting Serbia and Kosovo, added an important new prohibition: they strictly limited activities of religious communities to religious affairs. This prohibition, however, was not equally severe in all legislations. While Vojvodina Statute simply limited activities of religious communities to religious rites and affairs<sup>53</sup>, Croatian Statute did “... not allow [religious communities] to organize or to perform any of those social activities which do not directly satisfy religious

49 ZPPVZ, *Sl. list FNRJ*, n° 22/1953, Art. 5, line 1.

50 ZPPVZ, *Sl. list FNRJ*, n° 22/1953, Art. 5, line 2.

51 ЗППВЗ, *Сл. гласник СРС*, n° 44/1977, Art. 10; ZPPVZ, *Nar. novine*, n° 14/1978, Art. 9; ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 5; ЗППВЗ, *Сл. листи СРЦГ*, n° 9/1977, Art. 5; ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 7; ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 5 and ЗППВЗ, *Сл. листи САНК*, n° 10/1977, Art. 3. Vojvodina Statute did not contain any specific provision of this kind, but a general provision that will be discussed later in the text.

52 Only Slovenia (ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 21, line A, point 1), Macedonia (ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 30, lines 2 and 3) and Bosnia (ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 31, lines 2 and 3) decided to sanction both stipulations with 60 days of confinement, while Croatia in a same way protected only the first one (ZPPVZ, *Nar. novine*, n° 14/1978, Art. 23, line 2). Serbian, Kosovo and Montenegro statute did not envisage any penalties.

53 ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 3, line 2 (“Verske zajednice mogu vršiti samo verske obrede i verske poslove”).

community's needs in religious affairs, rites or religious needs of believers"<sup>54</sup>. Finally, Bosnian, Montenegrin and Macedonian statutes contained even more serious restrictions. They stipulated that "performing activities of general or specific social importance or founding bodies charged with these activities within religious communities or by their organs and organizations is forbidden"<sup>55</sup>. In Bosnian and Montenegrin case, the second line of the same article provided a single exception which refers to "preservation and maintenance of objects in property of religious communities which represent cultural, historical or ethnological heritage"<sup>56</sup>. The violation of these provisions was sanctioned particularly severely by important fines and confinement from 30 up to 60 days<sup>57</sup>.

### RELIGIOUS PRESS

Article 3 of 1953 Yugoslav Federal Statute had briefly guaranteed free publishing and distribution of religious press. This liberty had not been the subject of interior regulations from the early 1960s, but was developed in the mid-1970s in the statutes of republics and provinces<sup>58</sup>. However, all of them limited the aim and the content of this press on religious aspects. Most of them put this press under the general rules of media law, and only Serbian and Kosovo statutes set specific require-

- 54 ZPPVZ, *Nar. novine*, n° 14/1978, Art. 10 ("[...] nije dopušteno organiziranje ili obavljanje takve društvene delatnosti koja neposredno ne služi potrebama vjerske zajednice za obavljanje vjerskih poslova i vjerskih obreda, ili vjerskim potrebama vjernika"); ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 5, line 4.
- 55 ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 6 ("Zabranjeno je u okviru vjerskih zajednica njihovih organa i organizacija bavljenje djelatnostima od opšteg i posebnog društvenog značaja i osnivanja tjela za takvu djelatnost") and the same ЗППВЗ, *Сл. листи ЦРЦГ*, n° 9/1977, Art. 6 and ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 7, line 2. Slovenian stipulation was close to this, but did not explicitly forbid foundation of bodies charged for these activities (ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 5, line 4).
- 56 ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 6, line 2 ("Čuvanje i održavanje predmeta u vlasništvu vjerskih zajednica koji predstavljaju kulturno-historijsku ili etnološku baštinu") and ЗППВЗ, *Сл. листи ЦРЦГ*, n° 9/1977, Art. 6, line 2.
- 57 ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 31, line 2; ZPPVZ, *Nar. novine*, n° 14/1978, Art. 24, line 2; ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 21, line B, point 1; ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 31, line 4. Montenegrin (ЗППВЗ, *Сл. листи ЦРЦГ*, n° 9/1977, Art. 25, line 1) and Vojvodina (ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 23, line 1) statutes envisaged only medium fines.
- 58 ЗППВЗ, *Сл. іласник СРС*, n° 44/1977, Art. 11 and 12; ZPPVZ, *Nar. novine*, n° 14/1978, Art. 8; ZPPVS, *Ur. List SRS*, n° 15/1976, Art 9; ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art 10; ЗППВЗ, *Сл. листи ЦРЦГ*, n° 9/1977, Art 22; ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 26; ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 14 and ЗППВЗ, *Сл. листи САПК*, n° 10/1977, Art. 11.

ments for editor and director positions<sup>59</sup>, introduced procedures<sup>60</sup> and serious penalties for their violation<sup>61</sup>.

## REGISTRATION OF RELIGIOUS COMMUNITIES

Religious liberty considers free manifestation of religious beliefs and feelings through individual and collective acts of worship, i.e. in community with other believers.

Federal Statute of 1953 let Yugoslav citizens free to create religious associations<sup>62</sup> and defined in brief these organizations as legal persons at civil law<sup>63</sup>. No particular application form or registration procedure was envisaged by federal statute or interior regulations from the early 1960s. Registration of religious community was no more than a simple, informal information about its foundation<sup>64</sup>. Even if Yugoslav communist state seriously restricted and controlled religious activities, civil association on religious basis was completely free.

Republic and province statutes from mid-1970s did not really deviate from this course. In their legislations, all Yugoslav entities, except Croatia, adopted specific rules about formal application that every religious community had to submit to public authorities in order to get the status of legal person<sup>65</sup>. Yet, the absence of specific public records of religious communities, the fact that these formal applications were not conditioned by any content requirements as well as the fact that they could not be officially dismissed or rejected, suggests that they were not formal requests for official recognition but only simple declarations of existence. Hence,

59 ЗППВЗ, *Сл. гласник СРС*, n° 44/1977, Art. 12 and ЗППВЗ, *Сл. листи САПК*, n° 10/1977, Art. 11, line 2–4.

60 ЗППВЗ, *Сл. гласник СРС*, n° 44/1977, Art. 12 and ЗППВЗ, *Сл. листи САПК*, n° 10/1977, Art. 11, line 2–4.

61 Art 37 Serbian Statute (ЗППВЗ, *Сл. гласник СРС*, n° 44/1977) provided important fines and Slovenian (ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 21, line C, point 1), Montenegrin (ЗППВЗ, *Сл. листи СРЦГ*, n° 9/1977, Art. 25, line 4) and Vojvodina (ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 23, line 4) statutes medium fines. Croatian, Macedonian, Bosnian and Kosovo statutes did not sanction these provisions at all.

62 ZPPVZ, *Sl. list FNRJ*, n° 22/1953, Art. 2.

63 ZPPVZ, *Sl. list FNRJ*, n° 22/1953, Art. 8.

64 Lazić, I., *Pravni i činjenični položaj konfesionalnih zajednica u Jugoslaviji*, Frid, Z. (ur.), 1970, *Vjerske zajednice u Jugoslaviji*, Zagreb, NP Binoza, p. 61.

65 ЗППВЗ, *Сл. гласник СРС*, n° 44/1977, Art. 7 and 8; ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 6 and 7; ЗППВЗ, *Сл. листи СРЦГ*, n° 9/1977, Art. 2; ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 8 and 9; ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 2; ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 4 and 8 and ЗППВЗ, *Сл. листи САПК*, n° 10/1977, Art. 4.

if Croatia was the only republic that kept the free regime inherited from 1953 federal statute, other Yugoslav entities were no less liberal.

### 3. EDUCATION

#### RELIGIOUS SCHOOLS

According to article 38 of the first communist constitution of 1946, “school is separated from the church” and “private schools may be established only by the law, their activity is under the state control”<sup>66</sup>. But there is an important exception of that rule: the article 25 of the same constitutional act provides that “confessional schools for education of priests are free and under the general state control”. While the first line of article 38 was simply repeated verbatim by the article 4 of 1953 Federal Statute, the same statute elaborated more precisely the above-mentioned exception. First, it repeated that “religious communities shall be free to establish and run special confessional schools (high schools or colleges) for education of priests”<sup>67</sup> and then, in its following provisions, to put these schools under the general mechanism of state administrative control<sup>68</sup>, give them autonomy in curriculum and staff recruitment<sup>69</sup> and, in principle, enable further equalization in rights of persons who attend confessional schools with students from public institutions<sup>70</sup>.

Following interior regulations of the six Yugoslav federated republics from the early 1960s had defined more precisely some questions that Federal Statute left open – especially application form, competencies (reserved for local school inspections) and procedure details about due establishment of confessional schools – but had also expanded some rights. For example, these interior regulations do not speak only of confessional, but of boarding schools too. Contrarily, Croatian interior regulation limited some aspects of

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66 Art. 38 of 1946 FPRY constitution (“Škola je odvojena od crkve [...] samo zakonom se može dopustiti osnivanje privatnih škola, a njihov je rad pod kontrolom države”).

67 ZPPVZ, *Sl. list FNRJ*, n° 22/1953, Art. 4. This stipulation would become a constitutional provision ten years later: the article 46 of the 1963 Yugoslav Constitution, as well as the article 176 of the 1974 Constitution stipulated that “Religious communities may establish confessional schools for education of the priests”.

68 ZPPVZ, *Sl. list FNRJ*, n° 22/1953, Art. 18, line 2 (“Država vrši samo opći nadzor nad radom vjerskih škola”).

69 ZPPVZ, *Sl. list FNRJ*, n° 22/1953, Art. 18, line 1 (“Vjerske zajednice same upravljaju školama za spremanje svećenika, slobodno određuju program i plan nastave i slobodne su u određivanju nastavnika”).

70 ZPPVZ, *Sl. list FNRJ*, n° 22/1953, Art. 20 (“Osobe koje pohađaju škole za spremanje svećenika mogu uživati prava koja se priznaju osobama na školovanju”).

church autonomy previously granted by federal provisions, e. g. by excluding foreign citizens from teaching staff and administrative positions<sup>71</sup>, or by setting up strict control on school interior rules and staff behavior in order to keep them from forbidding students to use their constitutional rights<sup>72</sup>. Even six out of eleven infractions provided by Croatian regulation had referred to this matter<sup>73</sup>. Some fifteen years later these Croatian legal solutions would become less peculiar when almost all republics and autonomous provinces (excepting Vojvodina) had conditioned foreign citizens' attempts to teach or to administer confessional schools with previous administrative authorization<sup>74</sup>. Curiously, Croatian law-maker removed this same restriction and, in general, loosened state administrative control of religious schools in 1978. In other aspects, new legislations remained hardly innovative. A rare exception is Slovenian Statute which had completely equalized in rights confessional school students with those from state schools<sup>75</sup>. The same did Croatia, but not before 1988<sup>76</sup>. However, Slovenia was the only one among Yugoslav republics which disengaged local administrative bodies and assign its national authorities to inspect religious schools<sup>77</sup>.

## RELIGIOUS INSTRUCTION

According to the 1953 Federal Statute, religious instruction (catechism) was free, but its performance remained restricted to religious

71 UIZPPVZ, *Nar. novine*, n° 30/1961, Art. 13 (More precisely “Na radna mesta direktora i nastavnika škole za spremanje svećenika mogu se postaviti samo lica koja su jugoslavenski državljani i koja imaju prebivalište na teritoriji Federativne Narodne Republike Jugoslavije”).

72 UIZPPVZ, *Nar. novine*, n° 30/1961, Art. 18.

73 UIZPPVZ, *Nar. novine*, n° 30/1961, Art. 21, lines 2–6 and Art. 22, line 3.

74 ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 10, line 6; ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 22; ЗППВЗ, *Сл. лист СРЦГ*, n° 9/1977, Art. 20; ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 24; ЗППВЗ, *Сл. власник СРС*, n° 44/1977, Art. 24 and ЗППВЗ, *Сл. лист САПК*, n° 10/1977, Art. 15. Up to the mid-1970s only Croatian regulation sanctioned violation of this provision (an important fine or a confinement up to 15 days of imprisonment). It is noteworthy that only Serbian (ЗППВЗ, *Сл. власник СРС*, n° 44/1977, Art. 36, line 3), Bosnian (ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 32, line 8) and Kosovo (ЗППВЗ, *Сл. лист САПК*, n° 10/1977, Art. 28, line 4) statutes provided infractions and the same penalty for violation of these provisions (an important fine or a confinement up to 30 days of imprisonment).

75 ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 11 (Bosnian Statute divided competencies in state control between national authorities (charged for registration of confessionals schools) and local administrative bodies competent for their regular control, ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 20 and 23).

76 Art. 1 of *Zakon o izmjeni Zakona o pravnom položaju vjerskih zajednica* [Statute on legal status of religious communities Amendments], *Narodne novine* [People's newspapers], n° 52/1988, pp. 757.

77 ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 10, line 5.

facilities<sup>78</sup>. It was allowed only after regular classes in state schools and conditioned by previous consent of both parents and of the child him/herself<sup>79</sup>. While Serbian, Bosnian and Macedonian interior regulations asked for written consent of parents<sup>80</sup> under the menace of severe penalties<sup>81</sup>, Slovenian regulation asked only for an oral one<sup>82</sup> and did not provide any penalties<sup>83</sup>. In general, legal provisions on religious instruction would become laxest in the mid-1970s, due to new republic and province legislations. Although some of them (Montenegrin, Bosnian and Macedonian) extended earlier federal restriction allowing religious instruction only the time after regular school classes and “extra-curricular activities”<sup>84</sup>, Slovenian statute did not mention any of these schedule limits. On the other hand, Croatian statute had explicitly permitted religious instruction in religious facilities but from then on equally in any other space that was legally allowed<sup>85</sup>. Yet, the most important change is in the fact that none of these legislations ask for written parents’ consent anymore and that some of them ask for child’s consent only if the minor in question is minimum ten<sup>86</sup> or fourteen years old<sup>87</sup>. Finally, while Serbian, Montenegrin, Bosnian and Macedonian legislations still explicitly demanded the consent of both parents<sup>88</sup>, Kosovo Statute did not speak about this at all<sup>89</sup>, and other legislations played with words asking for “saglasnost roditelja, odnosno staratelja” which in Serbo-Croatian semantics may refer to both, or only to one of them<sup>90</sup>. Anyhow, with Slovenian exception<sup>91</sup>, all Yugoslav enti-

78 ZPPVZ, *Sl. list FNRJ*, n° 22/1953, Art. 4.

79 ZPPVZ, *Sl. list FNRJ*, n° 22/1953, Art. 19.

80 УИЗППВЗ, *Сл. гласник НРС*, n° 10/1962, Art. 7; УИЗППВЗ, *Сл. list NRBIH*, n° 16/1961, Art. 7 and УИЗООЗППВЗ, *Сл. весник НРМ*, n° 26/1961, Art. 7.

81 УИЗППВЗ, *Сл. гласник НРС*, n° 10/1962, Art. 14, line 5 and УИЗООЗППВЗ, *Сл. весник НРМ*, n° 26/1961, Art. 8, line 3.

82 УИЗППВЗ, *Ur. List LJRS*, n° 20/1961, Art. 8.

83 Neither did Croatian and Bosnian interior regulations.

84 ЗППВЗ, *Сл. лист СРЦГ*, n° 9/1977, Art. 18; ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 21 and ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 19.

85 ZPPVZ, *Nar. novine*, n° 14/1978, Art. 17 (“Vjerska pouka se može vršiti u prostorijama gdje se obavljaju vjerski poslovi i u drugim prostorijama pod uvjetima propisanom zakonom i drugim propisima”).

86 ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 21.

87 ZPPVZ, *Nar. novine*, n° 14/1978, Art. 17 and ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 22.

88 ЗППВЗ, *Сл. гласник СРС*, n° 44/1977, Art. 19; ЗППВЗ, *Сл. лист СРЦГ*, n° 9/1977, Art. 18; ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 21 and ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 19.

89 Maybe by mistake. Kosovo Statute characterizes a poor nomotehnic.

90 ZPPVZ, *Nar. novine*, n° 14/1978, Art. 17 and ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 22. Similar to this is Slovenian Statute (ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 14).

91 ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 21, line Č, points 2 and 3.



ties chose to sanction the violation of these provisions with medium fines or confinement up to 30 days<sup>92</sup>.

#### 4. FINANCING

##### PUBLIC FUNDING OF RELIGION

It is of interest to notice that communist Yugoslavia, as did most other eastern European people's democracies, did not proscribe state material assistance to religious communities. Highly controversial issue in western debates on secularism, public funding of religion was not only in contradiction with communist logic of strict separation, but, moreover, was recognized as a constitutional option: "The State may provide material assistance to religious communities"<sup>93</sup> says the last line of the article 25 of the 1946 FPRY constitution, as well as penultimate lines of the articles 46 and 174 of the 1963 and 1974 SFRY constitutions respectively. More precisely, in accordance with the new state ideology of self-management and decentralization, the last two constitutional texts replaced "state" with "social community" (Serbo-Croatian *društvena zajednica*), and practically enlarged the circle of public donors on various territorial collectivities: from autonomous provinces to local municipalities. The first Yugoslav Statute on Legal Status of Religious Communities of 1953 that initially delegated decision-making in financing only to the Federal and Republic governments<sup>94</sup> was consequently redesigned in the same way in 1965.

In general, the 1953 Federal Statute recognized two categories of state aids: governmental donation with defined purpose and those without specification of aim for given financial means. It is noteworthy that the statute authorized public authority to ask for receiver's expenses report only when the purpose of granted assistance was specified. All but two republic legislations from mid-1970s adopted the same stipulations. Namely,

- 92 Confinement was envisaged by ZPPVZ, *Nar. novine*, n° 14/1978, Art. 24, line 4; ZPPVZ, *Sl. list BiH*, n° 36/1976, Art. 32, line 6 and 7; ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 31, line 4. Medium fines were provided by Serbian Statute (ЗППВЗ, *Сл. иласник СРС*, n° 44/1977, Art. 38, lines 4–6); ЗППВЗ, *Сл. лисцї СРЦГ*, n° 9/1977, Art. 26, lines 5 and 6; ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 24, lines 7 and 8 and ЗППВЗ, *Сл. лисцї САПК*, n° 10/1977, Art. 30, line 5 (although this last one sanctioned only the religious instruction that had been performed out of religious facilities).
- 93 *Država može materijalno pomagati verske zajednice*. IN SFRY constitutions of 1963 and 1974 "The State" was replaced with "The Social community" in accordance with the new self-management ideology and decentralization.
- 94 ZPPVZ, *Sl. list FNRJ*, n° 22/1953, Art. 11.

Bosnian Statute required receiver's expenses report in both cases<sup>95</sup> and Vojvodina Statute asked for none<sup>96</sup>.

## REAL PROPERTY

Although quite similar, the three Yugoslav constitutions were not completely identical in this domain. While the first constitution stayed silent, the second (1963) introduced, and the final (1974) confirmed, a single, but important improvement on church financial independence by allowing churches real property in accordance with the law. However, since 1953 Federal Statute, as well as its Amendment Law of 1965, says nothing about this, religious communities were supposed to wait until the republics and provinces enact their own Statutes in mid-1970s.

Nevertheless, the range of church property rights were not the same everywhere. While Slovenia, Serbia, and Vojvodina briefly but widely defined that religious communities "may have real property" whatever it might be<sup>97</sup>, Montenegro and Kosovo statutes remained silent, and other republics clearly restricted this right only to the facilities with particular purpose such as "performing rituals, other religious affairs, or accommodation for religious servants"<sup>98</sup>. On the other hand, unlike the other Yugoslav republics and the two autonomous provinces, three entities – Montenegro, Slovenia and Croatia, did not legalize the construction of new and the reconstruction of existing religious facilities<sup>99</sup>.

## MONEY COLLECTION

Furthermore, the 1953 Federal Statute provided serious restrictions for money collection from believers. Although, the Statute allowed money contribution for religious purposes, it limited its collection to space of religious facilities. Actually, the collecting was also possible elsewhere, but "[...] only under the permission of public authority of the county or city"<sup>100</sup>. The regime of this administrative permission – content of appli-

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95 ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 30.

96 ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 16.

97 ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 18; ЗППВЗ, *Сл. вјасник СРС*, n° 44/1977, Art. 8 and ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art 6.

98 ZPPVZ, *Nar. novine*, n° 14/1978, Art. 7; ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 19 and ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 27.

99 ЗППВЗ, *Сл. вјасник СРС*, n° 44/1977, Art. 9; ЗППВЗ, *Сл. лист САПК*, n° 10/1977, Art. 12; ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 17; ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 19 and ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 28.

100 ZPPVZ, *Sl. list FNRJ*, n° 22/1953, Art. 12, line 2 ("[...] samo uz odobrenje narodnog kotara odnosno grada").

cation form, competency, and procedure details – would be standardized more precisely by following republic interior regulations from the early 1960s and, again, some fifteen years later, by a series of republic and province statutes from mid-1970s, in diverse manners – especially detailed in Serbia and practically free in Slovenia<sup>101</sup>. It is interesting to notice that some entities had immediately established police competency in this matter (Croatia, Serbia and Macedonia by their interior regulations of 1961 and, lately, Kosovo in its 1977 Statute), while others remained less explicit (Bosnia and Montenegro) or charged less demanding local administrative bodies with this task (Vojvodina Statute). Insomuch as 1976 Slovenian Statute explicitly introduced a compulsory administrative permission for this practice<sup>102</sup>, it is possible to observe a slight but general inclination towards tightened normative regulation in this field. The fact that Macedonian 1977 Statute explicitly denied church right to establish financing obligations for its believers goes only in favor of this conclusion<sup>103</sup>. Finally, with Slovenian, Vojvodina and Montenegrin exception<sup>104</sup>, all other Yugoslav entities sanctioned violation of these provisions by important fines and confinement up to 30 days of imprisonment<sup>105</sup>, which was more severe penalty than the one earlier provided in interior regulations<sup>106</sup>.

Finally, almost all Yugoslav federated entities had been allowing money or other kind of rewards the priests receive for their service whether they perform it in church, believer's home or within other localities com-

101 Slovenian interior regulation (UIZPPVS, *Ur. List LJRS*, n° 20/1961, Art. 15) stipulated that collecting of contribution for religious purposes is free of authorization when it is undertaken in churches and other public spaces reserved for worship according to the first article of this regulation as well as in other localities where religious community permanently undertake its religious affairs (“Pobiranje prispevkov v verske namene se lahko opravlja brez dovoljenja v cerkvah in drugih javnih prostorih, ki so določeni za opravljanje verskih obredov po prvem členu te uredbe, kakor tudi v drugih prostorih, v katerih verska skupnost stalno opravlja verske posle”).

102 ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 17, line 3.

103 ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 12, line three (“Верските заедници не можат да утврдуваат обврски на верниците за плаќање прилози”).

104 ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 21, line Č, point 4 (a small fine); ЗППВЗ, *Сл. лист СРЦГ*, n° 9/1977, Art. 26, line 3 (a medium fine) and ZPPVZ, *Sl. list SAPV*, n° 18/1976, Art. 24, line 4 (a medium fine).

105 ZPPVZ, *Sl. List BiH*, n° 36/1976, Art. 32, line 10; ЗППВЗ, *Сл. вјасник СРС*, n° 44/1977, Art. 36, line 4; ZPPVZ, *Nar. novine*, n° 14/1978, Art. 24, line 1; ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 31, line 1 and ЗППВЗ, *Сл. лист САПК*, n° 10/1977, Art. 28, line 5.

106 I.e. confinement up to 15 days: УИЗООЗППВЗ, *Сл. весник НРМ*, n° 26/1961, Art. 8, line 1; УИЗППВЗ, *Сл. вјасник НРС*, n° 10/1962, Art. 14, line 4 and УИЗППВЗ, *Nar. novine*, n° 30/1961, Art. 21, line 7 and УИЗППВЗ, *Sl. list NRBIH*, n° 16/1961, Art. 8, line 1.

monly used for religious practice<sup>107</sup>. This provision was usually taken from 1953 Federal Statute<sup>108</sup>.

## CONCLUSION

Was then communist Yugoslavia a secular state?

If a secular state is the one that treats all its citizens equally regardless of beliefs and, with that purpose, minimizes its interference in religious life, then some features of Yugoslav legal system – e.g. free registration of civil associations with religious aim – may suggest that communist Yugoslavia was not only a secular state, but a champion of secularism: even today, it is difficult to find a western liberal democracy, apart from the United States, that allows religious associations to be completely free from any previous official authorization. What easily relativizes this interpretation is the fact that once it was registered, every religious community in communist Yugoslavia faced serious legal restrictions and permanent state control over its activities.

Even the way religious freedom was defined as one's freedom to be or not to be a member of a religious community is revealing enough: federal Statute of 1953 and a series of republican and provincial statutes from mid-1970's guaranteed one's freedom not to be, rather than to be a member of a religious community. Similarly, Yugoslav legal system was more concerned in protecting citizens from forced participation in religious events or involuntary manifestation of religious feelings than enabling their free expression. Furthermore, communist laws watched attentively over all those who would try to discourage believers from execution of their constitutional rights or duties. Finally, if it protected religious beliefs from acts of discrimination, law also declared as illegal any beneficences or privileges based on religion. As a whole, the system was obviously more interested in keeping citizens at a distance from religion as such than securing their religiosity.

The secular character of Yugoslav legislation becomes even more uncertain with all the legal limits that Yugoslav laws imposed on religious freedom. It is the idea of religion-free public space and a need of its legal protection that led the law-maker in his task: according to 1953 Federal

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107 ЗППВЗ, *Сл. гласник СРС*, n° 44/1977, Art. 31; ZPPVZ, *Nar. novine*, n° 14/1978, Art. 14, line 4; ZPPVS, *Ur. List SRS*, n° 15/1976, Art. 17, line 5; ЗППВЗ, *Сл. листи СРЦГ*, n° 9/1977, Art. 24; ЗППВЗ, *Сл. весник СРМ*, n° 39/1977, Art. 12, line 5 and ЗППВЗ, *Сл. листи САПК*, n° 10/1977, Art. 23 (Bosnian and Vojvodina legislations remained silent on this issue).

108 ZPPVZ, *Sl. list FNRJ*, n° 22/1953, Art. 12.

Statute free worship was possible only inside religious facilities and their accessory spaces like church yards or cemeteries. There was an important exception: a person who lives or permanently stays in residential care institutions could practice his/her religion alone or with assistance of a religious servant with due respect of institution's House Rules. Any other religious activity in public needed a previous administrative authorization unless it was a private family affair such as a funeral or wedding. Furthermore, the latter was legal only if the civil marriage had already been registered. Legislations from mid-1970s – with conspicuous exception of north-western entities – inclined towards certain tightening of these solutions. They introduced more rigorous police penalties and constrained foreign citizens' rights to perform religious services on Yugoslav soil by previous administrative authorization.

These facts might range Yugoslav law next to French laical logic of separation, where religion belongs strictly and exclusively to the private sphere. The same "French connection" can be observed in Yugoslav ban of religious instruction at state schools, since it was followed by restrictions that digressed from mainstream western secular tradition: catechism was legal only within religious facilities, after regular classes in state schools and with previous parents' and child's consent. After 1974, north-western Yugoslav federated entities with a Roman catholic majority or important Roman catholic minority relaxed some of these requirements, while those south-eastern tightened their legal requirements. Evolution of legal rules on religious schools for education of priests, their autonomy and state control, followed the same tendency.

However, unlike the French laical model, the Yugoslav one applied the same logic of religious-free public space on political sphere on the whole. Federal Statute of 1953 contains a prohibition of any political abuse of religious institutions, affairs or manifestation of beliefs. With some differences in style, almost all republic and province statutes from mid 1970s expanded this prohibition even more: they did not allow religious communities to organize or perform any other social activities except those with religious connotation.

Finally, it is the possibility of state funding of religion that seriously undermines this parallel between Yugoslav legal policy and French *laïcité*. All the way from 1946 to its dissolution, communist Yugoslavia was allowing state financial support of the church and its activities. A highly controversial issue in western debates on secularism, public funding of religion was not only in contradiction with communist logic of strict separation, but recognized as a constitutional option. Still, this objection could be reconsidered by taking into account the anticlerical position of communist

regime in general. A striking level of discretionary powers (or absence of legal standards) delegated to public authorities in this field could be understood as a means of political pressure and control: specification of purpose of given governmental donation was not always compulsory and receiver's expenses report was only a facultative option. Put in cross perspective with other legal provisions in the matter of church finances, this conclusion becomes even more plausible: before 1963, there had been no constitutional or any legal guarantee for church real property, heavily affected by nationalization in the late nineteen forties. Even after Yugoslav republics and provinces applied this constitutional guarantee through their legal provisions from mid-seventies, they did it mostly in rather restrictive way, i.e. by limiting church real property only to facilities with particular religious purpose. Furthermore, those statutes remained equally restricted as the Federal Statute of 1953 had been regarding money collections.

In spite of these dissonances, the idea to connect Yugoslav communist model of state and church separation with French laical tradition does not seem arbitrary, though it needs further testing. As it has already been pointed out, no legal regime can be taken out of its historical context or properly understood without apprehending its jurisprudence. Anticlericalism of communist ideology, liberalization in the early 1960s, Tito's foreign policy to Vatican and rapid modernization of Yugoslav society up to the late 1980s, are only a few closely related historical and sociological phenomena that have to be put in cross perspective with this normative framework. It clearly exceeds the modest ambition of this paper: by indicating the reserves and by offering the arguments, it might not remove the question mark from its title, but could consolidate a hypothesis yet to be proved.

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NI SEKULARNA DRŽAVA NI LAIČKA REPUBLIKA?  
PRAVNI POLOŽAJ VERSKIH ZAJEDNICA U  
KOMUNISTIČKOJ JUGOSLAVIJI –  
NORMATIVNA ANALIZA ZAKONSKOG OKVIRA

Marko Božić

REZIME

Rad je doprinos široj akademskoj raspravi o upitnoj sekularnoj prirodi komunističkih režima. Cilj mu je da preispita tezu o navodnoj bliskosti komunističkog modela razdvajanja crkve i države i francuskog laičkog pristupa kroz istraživanje pravnog položaja verskih zajednica prema jugoslovenskom zakonodavstvu od 1946. do 1991. Metodološki, rad je ograničen na normativnu analizu osnovnog zakonodavnog okvira i posebno osvjetljava pitanja upražnjavanja verskih sloboda, verskog obrazovanja i državne pomoći verskim zajednicama. On takođe upućuje na tragove evolucije zvanične jugoslovenske zakonodavne politike prema religiji, odnosno naglašava razlike između osam paralelnih jugoslovenskih zakonodavstava koja su važila od sredine sedamdesetih. Rezultati ove normativne analize potvrđuju osnovanost teze o sličnosti jugoslovenskog komunističkog i francuskog laičkog modela razdvajanja crkve i države, ali ne izvode konačan zaključak o tome. U osnovi, rad pruža osnovu za buduća istraživanja u kojima bi njegove normativne nalaze trebalo ukrstiti sa relevantnim sociološkim i istorijskim činjenicama.

**Ključne reči:** sekularnost, laičnost, komunizam, Jugoslavija, pravni položaj verskih zajednica, sloboda veroispovesti, odnos crkve i države.

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