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## Church-State Relations and the Legal Status of Religious Communities in Slovenia

*Dr. Lovro Šturm\**

### I. INTRODUCTION

Although religious freedom in the Republic of Slovenia is protected under the Constitution of 1991, the doctrines defining the contours of the church-state relationship are still developing. The legislature and courts have taken various approaches in defining this relationship—at times they apply principles of strict government neutrality, and at other times, they provide more room for church-state cooperation in achieving common social goals. This Article provides a survey of religious freedom in Slovenia and emphasizes the potential for church-state cooperation. Beginning with a brief history of the church-state relationship in Slovenia, this Article focuses on the current constitutional and statutory provisions affecting religious communities and reviews modern trends in church-state cooperation in Slovenia. Since its emergence from the oppressive Communist era, Slovenian law has tended to rely on concepts of strict neutrality in defining the church-state relationship. However, as Slovenia continues to redefine its position in the area of religious freedom, it should adopt the more modern approach of elevating religious freedom over mere toleration by allowing the State to maintain a cooperative relationship with religious communities that recognizes the beneficial social function that religions fulfill.

### II. HISTORICAL AND SOCIOLOGICAL OVERVIEW

The Roman Catholic Church has traditionally occupied a special position in Slovenia. Based on its long-standing influence in the region and the number of its adherents, Catholicism may legitimately

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be termed the national religion of Slovenia.<sup>1</sup> As such, the development of the Church's relationship vis-à-vis the State reflects, in many respects, the trends of church-state relations generally in Slovenia.

Under the Habsburg Empire, of which Slovenia was a part, the Roman Catholic Church was the state church for centuries.<sup>2</sup> By the

1. This Table compares Slovenian religious demographics according to the 1991 and 2002 censuses:

Religion	1991	2002
Catholics	71.36%	57.80%
Orthodox Christians	2.38%	2.30%
Muslims	1.51%	2.40%
Protestants (including Evangelicals)	0.97%	0.90%
Other Religions	0.04%	0.30%
Believers Without Specific Religion	0.20%	3.50%
Response Denied	4.21%	15.70%
No Response Known	14.97%	7.10%
Atheists	4.35%	10.10%
Total	100.00%	100.00%

URAD VLADE REPUBLIKE SLOVENIJE ZA VERSKE SKUPNOSTI [REPUBLIC OF SLOVENIA, GOVERNMENT OFFICE FOR RELIGIOUS COMMUNITIES], DRŽAVA IN VERSKE SKUPNOSTI V RS [THE STATE AND RELIGIOUS COMMUNITIES IN THE REPUBLIC OF SLOVENIA] § 4.1, *translation available at* <http://www.sigov.si/uvsv/ang/StateAndReligiousCommunities.htm>. [hereinafter THE STATE AND RELIGIOUS COMMUNITIES] (English translation only reports the results of the 1991 census); *see also* BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP'T OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2002: SLOVENIA (2002), *available at* <http://www.state.gov/g/drl/rls/irf/2002/13981.htm> [hereinafter INTERNATIONAL RELIGIOUS FREEDOM REPORT 2002].

The Count of the Population in the Year 2001 Act ensures that each person counted freely declares his or her religion and whether he or she will answer questions regarding religious affiliation. *See* Zakon o popisu prebivalstva, gospodinjstev in stanovanj v Republiki Sloveniji leta 2001 [The Act Regulating the 2001 Census of Population, Households and Housings in the Republic of Slovenia], Official Gazette of the Republic of Slovenia [hereinafter Official Gazette RS] Nos. 66/2000, 26/2001, 22/2002. Collecting data by the State on the religious belief of its inhabitants is not contrary to the principle of the separation of religious communities and the State. Constitutional Court of the Republic of Slovenia [hereinafter Slovn. Const. Ct.], Decision No. U-I-92/01 (Feb. 28, 2002), 11 Odločbe in sklepi Ustavnega sodišča [Decisions and Rulings of the Constitutional Court of Slovenia] [hereinafter Odl.US] 25, Official Gazette RS, No. 22/2002, *available at* [www.us-rs.si](http://www.us-rs.si).

2. *See* JAMES GOW & CATHIE CARMICHAEL, SLOVENIA AND THE SLOVENES: A SMALL STATE AND THE NEW EUROPE 63–67 (2001); *see also* JEAN BÉRENGER, A HISTORY OF THE HABSBURG EMPIRE 1273–1700 (C.A. Simpson trans., 1994); KARIN J. MACHARDY, WAR, RELIGION AND COURT PATRONAGE IN HABSBURG AUSTRIA: THE SOCIAL AND CULTURAL

end of the eighteenth century, the State had become secularized,<sup>3</sup> but the Church retained a special influence over secular politics which continued until World War II<sup>4</sup> when, with the emergence of the Socialist Federative Republic of Yugoslavia (SFRY), a Communist regime, the Church was heavily persecuted by the State.<sup>5</sup> Ironically, despite the SFRY's declared principle of the separation of church and state, the Catholic Church in Slovenia was actually under strict state control during the period between 1945 and 1990.<sup>6</sup> The legal status and actual position of religious communities in the SFRY were not solely determined by generally known and published legal rules. They were primarily determined—especially in the case of the Roman Catholic Church—by strictly confidential legal rules which, together with other confidential regulations, formed a parallel secret legal system.<sup>7</sup> These secret internal rules were established with the

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DIMENSIONS OF POLITICAL INTERACTION, 1521–1622, at 108–11 (2003) (noting that the Habsburg court remained predominantly Catholic after the Protestant reformation).

3. The secularization of the Habsburg Empire and the emergence of religious pluralism is often referred to as “Josephinism” in reference to Emperor Joseph II. See H. Franz, *Joseph II*, in CATHOLIC ENCYCLOPEDIA (Tom Burgoyne trans.), available at <http://www.newadvent.org/cathen/08508b.htm>.

4. GOW & CARMICHAEL, *supra* note 2, at 21. For example, educational and charitable activities have remained almost completely in the hands of the Catholic Church.

5. STELLA ALEXANDER, CHURCH AND STATE IN YUGOSLAVIA SINCE 1945, at 90–94, 131–36 (1979) (describing the imprisonment of clergy and other post-war persecution occurring in Slovenia); Tamara Griesser-Pečar, *Pomen “osvoboditve” za slovensko katoliško cerkev* [The Meaning of “Liberation” for the Slovenian Catholic Church], in SLOVENIJA V LETU 1945 [SLOVENIA IN THE YEAR 1945], at 111–37 (Zbornik Referatov ed., 1996) [hereinafter Griesser-Pečar, “Liberation”]; Tamara Griesser-Pečar, *Die Verfolgung der Frauenorden in Slowenien nach 1945* [The Persecution of Feminine Religious Orders in Slovenia Since 1945], OSTERREICHISCHE OSTHEFTE, Vol. 42, Pt. 1, at 77 (2000) [hereinafter Griesser-Pečar, *Feminine Religious Orders*]; See also generally RELIGIJA, CERKEV IN ŠOLA V DOKUMENTIH OBČINSKIH KOMITEJEV ZKS [RELIGION, CHURCH, AND SCHOOLS IN THE DOCUMENTS OF LOCAL COMMITTEES OF THE SLOVENIAN COMMUNIST PARTY] (Milko Mikola ed., 2003) (two volumes) [hereinafter DOCUMENTS OF LOCAL COMMITTEES].

6. See Andrej Graselli, *Sporazum s Svetim sedežem* [Agreement with the Holy See], 55 PRAVNIK No. 1-3, at 94–106 (2000); LOVRO ŠTURM, OMEJITEV OBLASTI [LIMITS OF POWER] 263–66 (1999); NAVOLDILA ZA DELO VARNOSTNIH ORGANOV V SR SLOVENIJI [GUIDELINES FOR SECURITY ORGANS IN THE SOCIALIST REPUBLIC OF SLOVENIA] Viri No. 21 (France Martin Dolinar ed., 2003) [hereinafter GUIDELINES FOR SECURITY ORGANS].

7. See Lovro Šturm, *The Legal Status of Religious Communities in the Republic of Slovenia at the Time of Its Inclusion in the Free Democratic Society of Modern Europe*, in STATE AND CHURCH: SELECTED HISTORICAL AND LEGAL ISSUES 385–398 (A. Šelih ed., 2002) [hereinafter Šturm, *The Legal Status of Religious Communities*]. For example, National Security Service documents from 1967, 1970, 1982, and 1985 deal extensively with the Catholic Church. See generally SOCIALIST REPUBLIC OF SLOVENIA, THE POLICE MANUAL ON PROTECTION OF THE CONSTITUTION (1985); GUIDELINES FOR SECURITY ORGANS, *supra* note 6, at 131–34, 155,

view that the Catholic Church was a “permanent internal enemy,” which has “opened an ideological confrontation with the then sociopolitical conceptions.”<sup>8</sup> These rules sought to limit the social influence of the Church. For example, between World War II and 1991, religious communities were forbidden to engage in “activities of a general or social significance,”<sup>9</sup> including educational activities.<sup>10</sup> In 1945, the government prohibited the operation of any kind of private schools, and many private schools that operated before this time were nationalized.<sup>11</sup> Religious communities could establish only religious schools to educate priests, and diplomas from these religious schools were not publicly recognized.<sup>12</sup> As a result, the atheism prescribed by Marxism was the privileged belief in Slovenia for almost half a century and was encouraged throughout the educational system.<sup>13</sup> Relations between the Church and State did not improve until the Holy See and Yugoslavia reestablished

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165–170; Lovro Šturm, *Pravnosistemske komponente okolja, v katerem je delovala politična policija po letu 1974*, in GUIDELINES FOR SECURITY ORGANS, *supra* note 6, at 5–14.

8. Slovn. Const. Ct., Decision No.U-I-121/97 (May 23, 1997), 6 Odl.US 69, 390, Official Gazette RS, No. 34/97 (author’s translation); Ervin Dolenc, *Culture, Politics, and Slovene Identity*, in INDEPENDENT SLOVENIA: ORIGINS, MOVEMENTS, PROSPECTS 84 (Jill Benderly & Evan Kraft eds., 1994) (“The Catholic Church in Slovenia was considered the greatest potential enemy of the State until the very end of Communist rule; consequently it was carefully watched.”). *See generally* GUIDELINES FOR SECURITY ORGANS, *supra* note 6.

9. Zakon o pravnem položaju verskih skupnosti v Socialistični republiki Sloveniji [The Legal Status of Religious Communities in the Socialist Republic of Slovenia Act] art. 5, para. 4, Official Gazette RS, Nos. 15/1976, 42/1986, 5/1990, 22/1991 (1976) [hereinafter Legal Status Act]. Important amendments to the Legal Status Act in 1991 changed and updated the Act from its Communist conception. First, the 1991 amendments deleted the word “Socialist” from the title, which had previously read “The Legal Status of Religious Communities in the Socialist Republic of Slovenia.” Second, the 1991 amendments deleted the fourth paragraph of the fifth article, cited *supra*, so that the current Legal Status Act no longer contains that restriction. Finally, the 1991 amendments did away with article ten, a provision that tolerated religious educational institutions only for clergy. URŠA PREPELUH, PRAVNI POLOŽAJ VERSKIH SKUPNOSTI V SLOVENIJI [THE LEGAL POSITION OF RELIGIOUS COMMUNITIES IN SLOVENIA] 5 (1997). These changes, introduced in 1991 by the first democratically elected parliament in Slovenia, constituted a crucial turning point for religious communities.

10. Griesser-Pečar, “Liberation,” *supra* note 5, at 112; PREPELUH, *supra* note 9, at 5.

11. *See* Dolenc, *supra* note 8, at 84; ALEXANDER, *supra* note 5, at 122.

12. *See generally* JOŽE CIPERLE & ANDREJ VOVKO, ŠOLSTVO NA SLOVENSKEM SKOZI STOLETJA [SLOVENIAN SCHOOLS THROUGH THE CENTURIES] (1988). *See also* ALEXANDER, *supra* note 5, at 230–31.

13. ALEXANDER, *supra* note 5, at 230–31. *See also generally* DOCUMENTS OF LOCAL COMMITTEES, *supra* note 5.

diplomatic relations in 1966.<sup>14</sup> But even after 1970, although free profession of religion was constitutionally guaranteed, the Catholic Church and other religions were not allowed to appear in public life.<sup>15</sup>

On June 25, 1991, the Slovenian parliament proclaimed its independence from the SFRY.<sup>16</sup> After only ten days of resistance from the Yugoslav army, a peace agreement was reached, thus paving the way for national sovereignty and international recognition.<sup>17</sup> Since that time, the people of Slovenia have adopted a new constitution, formed a government, and established numerous laws respecting religious freedom and the church-state relationship. Many of these laws reflect a genuine appreciation for the social contribution made by religious communities. From a policy standpoint, the 1991 Constitution and several of the new laws promulgated under it embrace a positive view of church-state relations.<sup>18</sup> Yet, at the same time, the influence of Slovenia's Communist past and its strict or negative view of state neutrality towards religion<sup>19</sup> have been reflected in law and in recent constitutional interpretation.

### III. RELIGIOUS LIBERTIES UNDER THE SLOVENIAN CONSTITUTION

The Constitution of the Republic of Slovenia was enacted in December 1991. The rights of religious communities and the church-state relationship are specifically addressed in Article 7, which provides that "state and religious communities shall be separate; religious communities shall enjoy equal rights, [and shall] pursue their activities

14. FOREIGN AREA STUDIES, AMERICAN UNIVERSITY, YUGOSLAVIA: A COUNTRY STUDY 102 (Richard F. Nyrop ed., 1982).

15. Subsequent constitutions under the SFRY permitted only private, nonpublic exercise of religion. CONSTITUTION OF THE SOCIALIST FEDERATIVE REPUBLIC OF YUGOSLAVIA, art. 174 (Feb. 1974) [hereinafter YUGO. CONST.]; CONSTITUTION OF THE YUGOSLAV REPUBLIC OF SLOVENIA, art. 229 [hereinafter Y.R.S. CONST.]. Moreover, the statutory law in the Yugoslav Republic of Slovenia protected only "individual" exercise of religion. *See generally* Legal Status Act, Official Gazette RS, Nos. 15/1976, 42/1986, 5/1990, 22/1991 (1976); *see also* ALEXANDER, *supra* note 5, at 232.

16. Janko Prunk, *The Origins of an Independent Slovenia*, in MAKING A NEW NATION: THE FORMATION OF SLOVENIA, 29 (Danica Fink-Hafner & John R. Robbins eds., 1997).

17. *Id.* at 30.

18. For a discussion of the positive view of church state relations in contrast to the negative, or protective, view, see *infra* Part V.A –V.B.

19. For a discussion of religious freedom in its negative manifestation, see *infra* Part V.B.

freely.”<sup>20</sup> The fact that this article regulating church-state relations appears so early in the 1991 Constitution indicates that it is one of the basic legal and political principles upon which the Slovenian state is arranged. In addition to explicitly providing for religious freedom, the 1991 Constitution guarantees other rights pertaining to religious exercise: (1) freedom of conscience, (2) the right of conscientious objection, (3) the right to peaceful assembly and free association, and (4) freedom from discrimination. Moreover, two other constitutional provisions prohibit discrimination on the basis of religion.<sup>21</sup> Each guarantee of individual religious freedom is discussed in greater detail in this section and should be understood in relation to former constitutions that limited the profession of one’s religious beliefs to a purely private sphere.<sup>22</sup>

### *A. Freedom of Conscience*

In the Slovenian legal system, freedom of conscience and belief is protected under Article 41 of the 1991 Constitution.<sup>23</sup> This provision broadly protects the freedom of self-definition, referring not only to religious beliefs but also to moral, philosophical, and other world views. The article includes three provisions: (1) the positive entitlement, or the assurance that “[r]eligious and other beliefs may be freely professed in public and private life”;<sup>24</sup> (2) the negative entitlement, or the right for a person *not* to have or manifest any religious or other beliefs;<sup>25</sup> and (3) the parent’s prerogative, or the right of parents “to provide their children with a religious and moral upbringing in accordance with their beliefs.”<sup>26</sup> The 1991 Constitution

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20. USTAVA REPUBLIKE SLOVENIJE [Constitution of the Republic of Slovenia] art. 7 (1991) [hereinafter SLOVN. CONST. (1991)], *translated at* [http://www.us-rs.si/en/index.php?sv\\_path=6](http://www.us-rs.si/en/index.php?sv_path=6).

21. *See id.* art. 41 (providing for freedom of conscience and belief) *and* art. 46 (providing the right of conscientious objection).

22. Compare YUGO CONST., art. 174 and Y.R.S CONST., art. 229 with the post-Communist era provisions cited in *supra* note 21.

23. SLOVN. CONST. art. 41 (1991). The freedom of conscience is interpreted broadly to encompass not only religious beliefs but also moral, philosophical, and other world views or views of life. *See* Slovn. Const. Ct., Decision No. U-I-68/98 (Nov. 22, 2001), 11 Odl.US 25, Official Gazette RS, No. 101/2001 (grouping within the freedom of conscience the right to have and express personal religious, moral, and philosophical beliefs).

24. SLOVN. CONST. art. 41, para. 1 (1991).

25. *Id.* para. 2 (“No one shall be obliged to declare his religious or other beliefs.”).

26. *Id.* para. 3.

does not define in more detail what activities are embraced by the freedom of conscience. The individual's freedom of conscience implies both the positive entitlement—the opportunity for individuals to have, change and manifest their optional religious and other beliefs—and also the negative entitlement—the right for a person not to have or manifest any religious or other beliefs.

Freedom of conscience in the Republic of Slovenia, encompassing both the positive and the negative entitlement, resists limitation. According to Article 15 of the 1991 Constitution, absent other limitations, the freedom of conscience, like other human rights and freedoms, is generally limited only by the rights of others.<sup>27</sup> The Slovenian Constitutional Court has not yet had an opportunity to resolve any such conflicts between freedom of conscience and other constitutionally protected rights. It should be noted that the freedom of conscience is sufficiently fundamental that, unlike other constitutional rights which may be suspended or restricted temporarily during a state of war or emergency, the freedom of conscience is one of seven special constitutional rights and freedoms that can never be temporarily suspended, not even in war.<sup>28</sup>

#### *B. Right of Conscientious Objection*

The right of conscientious objection is also protected by the Slovenian Constitution. Article 46 provides that the right of “[c]onscientious objection shall be permissible in cases provided by law where this does not limit the rights and freedoms of others.”<sup>29</sup> Today, conscientious objection is allowed by statute in only two areas: state defense and medical operations.

With regard to state defense, the right of conscientious objection and the procedure for asserting its protection is governed by the Military Service Act.<sup>30</sup> In this context, citizens who, because of their religious, philosophical, or humanitarian beliefs, are not willing to perform military duty are assured the opportunity of participating in

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27. *Id.* art. 15, para. 3.

28. *Id.* art. 16. Other constitutional rights may be suspended or restricted temporarily during a state of war or emergency. These lesser constitutional rights can only be suspended in a nondiscriminatory way for the duration of the state of emergency or war and to the minimum extent required.

29. *Id.* art. 46.

30. Zakon o vojaški dolžnosti [The Military Service Act], Official Gazette RS, Nos. 18/1991, 74/1995, 43/2001, 86/2002.



the defense of the State in some other manner.<sup>31</sup> The Act came into force in 1991 before the new Constitution and originally allowed individuals to object for reasons of conscience only at conscription. Yet, under the 1991 Constitution, the right to conscientious objection is held by everyone who is obligated to participate in performing military duties: recruits, soldiers during their period of military services, and commissioned soldiers.<sup>32</sup> It is a permanent right and can be limited only by the rights of others and in certain situations enumerated in the 1991 Constitution.<sup>33</sup> Thus, in 1995 the Constitutional Court of the Republic of Slovenia decided that the Act was not consistent with the Constitution insofar as the act allowed one to claim the right of conscientious objection at conscription but not also later.<sup>34</sup> Following the Constitutional Court decision, the statute was appropriately amended.

In the context of medical operations, under the Health Services Act, doctors may refuse to operate on patients, except in emergencies, if the operation is contrary to the doctors' conscience and to the international rules of medical ethics.<sup>35</sup> In order to exercise this right, they must first inform the respective medical facility of their objection. That facility must respect their decision and, at the same time, insure that its patients can exercise their health care rights.<sup>36</sup>

### *C. Right to Peaceful Assembly and Free Association*

In addition to freedom of conscience and the right to conscientious objection, the 1991 Constitution also protects the right to peaceful assembly and free association in Article 42, which provides the opportunity to exercise freedom of conscience and religious belief as an individual right.<sup>37</sup> Like freedom of conscience,

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31. SLOVN. CONST. art. 123, para. 2 (1991).

32. *Id.* art. 46 (guaranteeing the right of conscientious objection without regard to pre- or postconscription status).

33. *Id.*

34. Slovn. Const. Ct., Decision No. U-I-48/94 (May 25, 1995), 4 Odl.US 50, Official Gazette RS, No. 37/95.

35. Zakon o zdravstveni dejavnosti [The Health Services Act], Official Gazette RS, No. 9/1992.

36. *Id.*

37. Article 42 provides:

The right of peaceful assembly and public meeting shall be guaranteed.

Everyone has the right to freedom of association with others.

freedom of association implies both the positive entitlement, or the opportunity of subjects to associate with others and thus establish religious communities, and the negative entitlement, or the opportunity of subjects not to enter into any association and refuse to participate in one.<sup>38</sup> Moreover, Article 57 provides for the freedom of education, which is closely related to the rights of peaceful assembly and the freedom of association. In guaranteeing the freedom of education, Article 57 also prescribes compulsory elementary education financed from public funds.<sup>39</sup> The 1991 Constitution provides for the autonomy of public universities and other public junior colleges; however, it leaves the regulation of the manner of their financing to statute.<sup>40</sup> Thus, while the 1991 Constitution does not explicitly provide for religious schools, the constitutional right to freedom of education seems to permit them.

#### *D. Freedom from Discrimination*

In addition to the articles that regulate religious relations between individuals and the State, two constitutional provisions regulate religious relations among individuals and another implements international norms in guaranteeing religious freedom. First, under Article 63, people are prohibited from inciting religious discrimination and inflaming religious hatred and intolerance.<sup>41</sup> Second, reflecting the

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Legal restrictions of these rights shall be permissible where so required for national security or public safety and for protection against the spread of infectious diseases.

Professional members of the defence forces and the police may not be members of political parties.

SLOVN. CONST. art. 42 (1991).

38. *Constitutional Jurisprudence in the Area of the Freedom of Religion and Beliefs: Slovenia*, in CONSTITUTIONAL JURISPRUDENCE IN THE AREA OF FREEDOM OF RELIGION AND BELIEFS: XI CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS 679 (Office of the Constitutional Tribunal, Republic of Poland ed., 2000) [hereinafter *Constitutional Jurisprudence*].

39. Article 57 provides:

Freedom of education shall be guaranteed.

Primary education is compulsory and shall be financed from public funds.

The state shall create the opportunities for citizens to obtain a proper education.

SLOVN. CONST. art. 57 (1991).

40. Article 58 provides:

State universities and state institutions of higher education shall be autonomous.

The manner of their financing shall be regulated by law.

*Id.* art. 58.

41. Article 63 provides:

principle of equality before the law, Article 14 prohibits discrimination on the basis of religion or other belief.<sup>42</sup> Finally, Article 8 mandates direct application of ratified and published treaties and other international agreements,<sup>43</sup> such as the United Nations Universal Declaration of Human Rights<sup>44</sup> and the European Convention on Human Rights.<sup>45</sup> Therefore, this requirement, and the agreements

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Any indictment to national, racial, religious or other discrimination, and the inflaming of national, racial, religious or other hatred and intolerance are unconstitutional.

Any incitement to violence and war is unconstitutional.

*Id.* art. 63. Article 63 is complemented by Article 141 of the Penal Code which defines discrimination on the basis of religious belief as a criminal offense. *See* Kazenski zakonik Republike Slovenije [Penal Code of the Republic of Slovenia] art. 141, Official Gazette RS, No. 63/1994. Article 141 provides that any individual who, because of a difference in religious beliefs, deprives another individual of any human right and fundamental freedom recognized by the international community or determined by the Constitution and statute, or who restricts such a right or freedom, or who grants someone some special right or benefit on the basis of discrimination, violates the principle of equality. A fine or imprisonment of up to one year is prescribed for such an offense. If such offense is committed by an official abusing his or her official position or rights thereof, imprisonment of up to three years is prescribed instead. *Id.*

42. Article 14 provides:

In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status or any other personal circumstance.

All are equal before the law.

SLOVN. CONST. art. 14 (1991). Violating this principle of equality or the prohibition of discrimination in the area of freedom of religion is also sanctioned as a crime under the Penal Code of the Republic of Slovenia because it violates human rights and freedoms. *See* Penal Code of the Republic of Slovenia art. 141, Official Gazette RS, No. 63/1994; *see also supra* note 41.

43. Article 8 provides that “[l]aws and regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly.” SLOVN. CONST. art. 8 (1991).

44. Under the Universal Declaration of Human Rights, “[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” GA Res. 217A (III), U.N. GAOR, 1st Sess., art. 18, U.N. Doc. A/8190 (1948). The Declaration also requires equal protection without discrimination, *id.* art. 7, freedom of opinion and expression, *id.* art. 19, and freedom of peaceful assembly, *id.* art. 20.

45. The European Convention on Human Rights and Fundamental Freedoms provides that “[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.” European Convention on Human Rights and Fundamental Freedoms, *opened for signature* Nov. 4, 1950, art. 9, 213 U.N.T.S. 221, *available at* <http://www.echr.coe.int/Convention/webConvenENG.pdf> (official website of the European

embraced by it also serve to shape the freedom of religion and belief in Slovenia.<sup>46</sup>

#### IV. LEGISLATION REGARDING RELIGIOUS COMMUNITIES

##### *A. The Legal Status of Religious Communities*

In addition to the constitutional provisions mentioned above, various legislative acts further define the scope of religious freedom and the relationship between church and state in Slovenia.<sup>47</sup> Most

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Court of Human Rights). The Convention also protects the freedom of expression, *id.* art. 10, the freedom of peaceful assembly, *id.* art. 11, and freedom from discrimination, *id.* art. 14.

46. *See also* International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 18, paras. 1–2, 999 U.N.T.S. 171; 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, GA Res. 36–55, U.N. GAOR, 36th Sess., Supp. No. 51, Agenda Item 75, U.N. Doc. A/36/55; *Concluding Document of the Vienna Meeting: Conference on Security and Cooperation in Europe*, Jan. 19, 1989, 28 I.L.M. 531.

47. In addition to the Legal Status of Religious Communities Act, discussed *supra* 9 and *infra* text accompanying notes 49–84, a series of statutes from different legal fields also affect the legal status of religious communities in the Republic of Slovenia. In their provisions, these statutes explicitly mention religious communities and protect freedom of religious belief. For example, some statutes protect certain religious values. *See* Zakon o javnih glasilih [The Public Media Act], Official Gazette RS, Nos. 35/2001, 54/2002; Zakon o filmskem skladu Republike Slovenije [The Film Fund of the Republic of Slovenia Act], Official Gazette RS, No. 17/1994; The Penal Code arts. 141, 153, 183, 286, 300, and 314, Official Gazette RS, Nos. 36/1994, 23/1999; The Military Service Act, Official Gazette RS, Nos. 18/1991, 74/1995, 43/2001, 86/2002; The Health Activities Act, Official Gazette RS, No. 9/1992. Other statutes protect the confidential relationship between an individual and his confessor. *See* Zakon o kazenskem postopku [The Criminal Procedure Act], Official Gazette RS, Nos. 63/1994, 70/1994, 72/1998, 6/1999, 66/2000, 111/2001; Zakon o pravnem postopku [The Civil Procedure Act], Official Gazette RS, No. 1/1995; Zakon o splošnem upravnem postopku [The General Administrative Procedure Act], Official Gazette RS, Nos. 80/1999, 70/2000.

Some statutes enable the implementation of freedom of religion in various related areas. *See* Zakon o javnih zbiranjih [The Public Gatherings Act], Official Gazette RS, No. 59/2002; Zakon o pokopališki in pogrebni dejavnosti ter o urejanju pokopališč [The Graveyard and Burial Activities Act], Official Gazette RS, No. 26/1990. Still other statutes make possible and restrict the participation of religious communities in certain activities and public life. *See* Zakon o organizaciji in financiranju vzgoje in izobraževanja [The Organization and Financing of Education Act], Official Gazette RS, Nos. 12/1996, 23/1996, 22/2000, 64/2001, 101/2001, 108/2002, 24/2003, 34/2003, 34/2003, 79/2003 and 79/2003 (new official text); Zakon o Radioteleviziji Slovenija [The Radio and Television Act], Official Gazette RS, Nos. 18/1994, 29/1994, 73/1994, 88/1999, 90/1999; Zakon o volilni kampanji [The Elections Campaign Act], Official Gazette RS, No. 62/1994; Zakon o političnih strankah [The Political Parties Act], Official Gazette RS, Nos. 62/1994, 1-1/1999, 70/2000, 51/2002; The Institutes Act, Official Gazette RS, No. 12/1991. Some statutes determine the special tax status of religious communities or priests. *See* Zakon o davku od dobička pravnih

notable among these legislative acts is the Legal Status of Religious Communities Act<sup>48</sup> in the Republic of Slovenia (the “Legal Status Act”).<sup>49</sup> The Legal Status Act is important in the area of religious freedom for three primary reasons. First, it regulates expression of religious sentiment. Second, it requires strict neutrality towards religion in public matters.<sup>50</sup> Third, it indicates that religious communities may become legal entities under civil law and obtain legal status through registration with the Office of the Republic of Slovenia for Religious Communities.<sup>51</sup> This Section addresses the details of each provision and generally evaluates the Legal Status

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oseb [The Corporate Profit Tax Act], Official Gazette RS, No. 72/1993; Zakon o stavbnih zemljiščih [The Construction Land Act], Official Gazette RS, No. 44/1997; Zakon o dohodnini [The Personal Income Tax Act], Official Gazette RS, Nos. 71/1993, 2/1994, 7/1995, 44/1996; Zakon o socialnem varstvu [The Social Security Act], Official Gazette RS, Nos. 54/1992, 56/1992 (a special system for priests’ insurance); Zakon o pokjinskem in invalidskem zavarovanju [The Pension and Disability Insurance Act], Official Gazette RS, Nos. 12/1992, 5/1994, 7/1996, 54/1998. Finally, some statutes also regulate the return of property to religious communities in denationalization proceedings. Zakon o denacionalizaciji [The Denationalization Act], Official Gazette RS, No. 27/1991-I. General legal acts which apply to a generic legal entity or to a legal entity under civil law are also relevant.

48. The Slovenian legal system does not recognize a distinction between churches and religious communities but only recognizes the general concept of a religious community. While the legal system uses the term “church” in a few locations, it is only used as part of an established phrase, such as the separation of church and state. These phrases are used particularly in public discussions.

49. Legal Status Act, Official Gazette RS, Nos. 15/1976, 42/1986, 5/1990, 22/1991 (1976). The Act was originally adopted in the Socialist Republic of Slovenia in 1976, but was later amended twice: the 1986 amendments included penal provisions, and in 1991 important amendments were adopted that, for the first time, authorized the establishment and operation of private religious schools in Slovenia. See *supra* note 9 for a more detailed discussion of the changes introduced by the 1991 amendments to the Legal Status Act. But notwithstanding these changes deficiencies in the Legal Status Act are becoming increasingly evident. Not only has an evolving society rendered the Legal Status Act obsolete, but the Act is also inconsistent with the 1991 Constitution and the new constitutional system in some respects. See PREPELUH, *supra* note 9, at 9; *Constitutional Jurisprudence*, *supra* note 38, at 700; see also Lovro Šturm, *Commentary on Article 7*, in KOMENTAR USTA VE REPUBLIKE SLOVENIJE [COMMENTARY ON THE CONSTITUTION OF THE REPUBLIC OF SLOVENIA] 126 (Lovro Šturm ed., 2002) [hereinafter Šturm, *Commentary*]. To address these concerns, a new law designed to supplant the Legal Status Act was drafted in 1996, but after long negotiations was withdrawn in 2003. A new draft is foreseen early in 2004.

50. Legal Status Act, Official Gazette RS, Nos. 15/1976, 42/1986, 5/1990, 22/1991 (1976).

51. *Id.* The Legal Status Act also contains a series of other provisions that refer to the religious press, the performance of services, the establishing of religious schools and religious lessons, the pastoral activity of religious communities, the financing and other property rights of religious communities, and also the prescribing of criminal sanctions for violations. Those provisions are discussed in greater detail *infra*.

Act's conformity with the Constitution and the theory of separation of church and state. Essentially, the Legal Status Act articulates a policy of strict neutrality in church-state relations reflected in its regulation of (1) individual religious expression, (2) official state action, and (3) the registration of religious communities.

### *1. Religious profession*

With regard to individual religious observances, the basic principle of the Legal Status Act ensures an individual's freedom to profess one's religion.<sup>52</sup> The Act was originally adopted by the Socialist Republic of Slovenia in 1976,<sup>53</sup> and, as a result, the Legal Status Act defines the freedom to profess one's religion as a private matter. Thus, in the context of the time in which the law was enacted, this provision meant that everything pertaining to religion should be relegated to the private sphere.<sup>54</sup> Religion as such had no place either in the media, in the professional life of an individual, or in the schools,<sup>55</sup> and certainly not in matters of state. However, as interpreted, this section is unconstitutional under Article 41 of the

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52. *Id.*

53. See PREPELUH, *supra* note 9, at 10; *Constitutional Jurisprudence*, *supra* note 38, at 678; see also Šturm, *Commentary*, *supra* note 49, at 126. In principle, the Slovenian legal system only addresses churches or religious communities generally; it does not have any statutes regulating individual churches or religious communities. However, after negotiation, the Government of Slovenia signed mutual agreements on the legal questions with the Catholic Church in 1999 and the Evangelical Church in 2000. INTERNATIONAL RELIGIOUS FREEDOM REPORT 2002, *supra* note 1.

The first international agreement between the Government of Slovenia and the Holy See was signed in 2001. The Agreement was under constitutional review until November 19, 2003 when the Constitutional Court declared it in accordance with the constitution. See Slov. Const. Ct., Decision No. Rm-1/02-21 (Nov. 19, 2003) (qualifying the agreement as constitutional insofar as the court's recent interpretations of the principle of church-state separation is obligatory for all state organs not only in exercising the agreement but also for the future in all further possible agreements). There are also current negotiations with the Serbian Orthodox Church, the Adventist Church, and the Islamic Religious Community in Slovenia.

54. Legal Status Act, Official Gazette RS, Nos. 15/1976, 42/1986, 5/1990, 22/1991 (1976) art. 1.

55. The educational system, as previously mentioned, was not only secular and neutral but actively atheistic. See *supra* notes 8-9 and accompanying text. In fact, the constitution in effect in 1976 explicitly declared atheism the state ideology. See generally YUGO. CONST. pt. V (1974).

1991 Constitution, which provides that one can freely profess religious or other beliefs in public life.<sup>56</sup>

## 2. *Separation of church and state*

Consistent with the prohibition on public religious expression, the 1976 Act also contains a provision explicitly dealing with the separation of church and state.<sup>57</sup> Historically, this provision has been interpreted to mean that the State remains neutral toward all religions, that it does not take a position concerning world views, and that it does not identify itself with any religion or religious community.<sup>58</sup> Thus, under the Legal Status Act, the principle of church-state separation in Slovenia means that religious communities are autonomous in their internal affairs but that public life is secular. While religious communities have some degree of autonomy, their operation must conform to the Constitution, statutes, and other regulations. Accordingly, the State imposes on them certain duties and grants them certain rights,<sup>59</sup> including the opportunity of free establishment, but does not meddle with religious questions and disputes or the content of their religious beliefs. Thus, there is no state church. In addition,

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56. REPUBLIC OF SLOVENIA, REPORT OF THE SLOVENIAN CONSTITUTIONAL COURT: US RS, B, ch. 1, sec. 1, at 699. Furthermore, Article 42 of the Constitution provides for the freedom to establish religious communities. These religious communities all have equal standing, are separate from the State, and are free to attend to their religious matters within the framework of the legal system. SLOVN. CONST. art. 42, para. 1 (1991) (“The right of peaceful assembly and public meeting shall be guaranteed.”).

However, there are some limitations to public profession of religious beliefs. For example, religious ceremonies must generally be performed inside of church buildings and can only be performed outside during burials at cemeteries. Such ceremonies performed during burials are subject to the potential suspension by a competent state authority in order to protect public health and order. Permission must be obtained from the Minister of Interior Affairs to perform a religious ceremony outside of church buildings; however, if the Minister of Interior Affairs fails to respond, such a request is considered a grant of permission. The Graveyard and Burial Activities Act, Official Gazette RS, No. 26/1990.

Nevertheless, the government takes a less strict approach to religious holidays. Slovenian legislation does not mention explicitly the right to observe and celebrate religious holidays. However, that right is encompassed by the right to profess one’s religion both privately and publicly. In fact, certain church holidays are Slovenian national holidays: Christmas (December 25), Easter Monday, Whitsunday, Mary’s Ascension (August 15), the Protestant Day of Reformation (October 31). THE STATE AND RELIGIOUS COMMUNITIES, *supra* note 1.

57. Legal Status Act, Official Gazette RS, Nos. 15/1976, 42/1986, 5/1990, 22/1991 (1976).

58. *Id.*

59. *See supra* note 56.

both discrimination against religious groups and privileges for members of a religious community are prohibited.<sup>60</sup> Furthermore, those members do not have special status under public law,<sup>61</sup> nor do they discharge any authoritative public functions.

Although the 1991 Constitution provides for the separation of church and state in principle, the doctrine is still in its infancy in Slovenia. Thus, the constitutionality of the Legal Status Act with regard to church-state separation depends to a large degree on the manner in which the 1991 Constitution is interpreted and the model of church-state relations adopted. The initial statements of the Slovenian Constitutional Court were friendly towards religious communities.<sup>62</sup> For example, churches and religious communities were recognized as universally beneficent institutions.<sup>63</sup> The Slovenian Constitutional Court also gave notice that churches and religious communities perform an important function in society.<sup>64</sup>

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60. For example, there is no special regulation of the labor law within churches. It may be difficult to understand, especially compared with other countries, but there is no such exemption for religious organizations to be able to hire or fire based on religion. The same labor law is valid both for the workers in the factories and for the (very few) employees in the churches, which are mainly in church-sponsored private schools.

61. The Slovenian legal system only addresses churches or religious communities generally; it does not have any statutes regulating individual churches or religious communities. *But see supra* note 53 concerning agreements with the Holy See, the Evangelical Church, and other religious communities.

62. For example, the Court found that the Military Service Act was not consistent with the Constitution insofar as the act allowed one to claim the right of conscientious objection at conscription but not later. Slovn. Const. Ct., Decision No. U-I-48/94 (May 25, 1995), 4 Odl.US 50, Official Gazette RS, No. 37/95; *see also supra* note 45 and accompanying text. This positive view of the church-state relationship was also expressed in 1994 by the Joint Roof Committee of the Roman Catholic Church and the Republic of Slovenia in a document concerning the uniform interpretation of the constitutional provision on the separation of state and religious communities. Here it was determined that, in principle, the separation of state and religious communities implies that the State is not connected to any religious community, none of the religious communities are either privileged or discriminated, and the latter are in their field autonomous and independent. According to the committee, "[t]he democratic State of Slovenia does not opt for religiosity or non-religiosity as such, but respects the right of citizens to free, individual or collective, ideological or practical, profession of their religious or nonreligious convictions. On this point, it takes into account that citizens have different religious and nonreligious convictions, and that it is responsible for the freedom of everyone." *Constitutional Jurisprudence, supra* note 38, at 708 n.21 (citing the Guideline for the Joint Commission (June 23, 1994)); *see also* Šturm, *Commentary, supra* note 49, at 124.

63. Slovn. Const. Ct., Decision No. U-I-107/96 (Dec. 5, 1996), 5 Odl.US 174, Official Gazette RS, No. 1/97; repeated in Slovn. Const. Ct., Decision No. U-I-121/97 (May 23, 1997), 6 Odl.US 69, Official Gazette RS, No. 34/97.

64. Slovn. Const. Ct., Decision No. U-I-326/98 (Oct. 14, 1998), 7 Odl.US 190, Official Gazette RS, Nos. 67/98, 76/98.



Yet the separation of church and state in Slovenia remains burdened by Slovenian history. In the past, the principle of church-state separation was understood primarily in the negative sense, by exclusion of the church from public life.<sup>65</sup> This negative understanding was conditioned by the negative attitude towards religion as such. As a result, the Slovenian Constitutional Court has, since 1999, dealt more extensively with the principle of church-state separation and has demanded an ultra-strict separation. For example, while the Constitutional Court held that the prohibition, within the Education Act, of religious activities in state-licensed private kindergartens and schools was unconstitutional, it also confirmed the validity of the existing enactment that completely excludes each and every religious activity from public kindergartens and schools.<sup>66</sup>

Thus, with few exceptions,<sup>67</sup> the principle of separation, in practice, is being implemented relatively strictly. Accordingly, under the present interpretation of the Constitution, the provisions of the Legal Status Act regarding church-state separation are likely to be upheld. Nevertheless, given the other inadequacies of the Act, it should be revised, and the current Constitution should be interpreted consistent with the opinions of Slovenian legal doctrine, which are more inclined to follow the cooperative model of state and church separation advocated below.

### *3. Registration of religious communities*

In addition to defining the church-state relationship, the Legal Status Act provides that the establishment (or cessation) of religious communities is to be reported to the Office of the Government of the Republic of Slovenia for Religious Communities (“Office”).<sup>68</sup> Once the Office enters a group into the register of religious communities in

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65. *See supra* text accompanying notes 5–15.

66. Slovn. Const. Ct., Decision No. U-I-68/98 (Nov. 22, 2001), 11 Odl.US 25, Official Gazette RS, No. 101/2001 (reasoning that in respect of the rights of the nonbelievers and the principle of separation, it is necessary in a democratic society to ban religion completely from public educational institutions, not only from the curriculum, but also from the school premises).

67. For example, the Faculty of Theology has been incorporated into the domain of the public University of Ljubljana.

68. Legal Status Act, Official Gazette RS, Nos. 15/1976, 42/1986, 5/1990, 22/1991 (1976). The Office is a special organ or professional service of the Slovenian government overseeing religious communities. Currently, thirty-six religious communities have registered in Slovenia. *See* THE STATE AND RELIGIOUS COMMUNITIES, *supra* note 1.

Slovenia, the Act explicitly provides that the religious community and its appropriate organs<sup>69</sup> are legal entities under private law and that their acts are not binding.<sup>70</sup>

By organizing itself in this way, a religious community does not obtain special recognition from the State, nor are registered religious communities subject to any special supervision by the State.<sup>71</sup> They are, however, subject to the same general supervision as other legal entities because their activities must conform to the Constitution, statutes, and other regulations.<sup>72</sup> Registration affords merely an opportunity to carry

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69. These organizational units can either be local congregations of a religious community, such as a parish of the Catholic Church, or organs of the religious community, such as a publishing company, but cannot be either educational or charitable institutes. This limitation arises from the Decree on the Introduction and Use of the Standard Classification of Activities, which states that independent religious legal entities cannot be registered educational or charitable institutes that are constituent parts of religious communities and operate externally. Instead, these educational or charitable entities will have to register as, for example, private institutes. Under this Decree, educational and charitable activities must be separated from religious activities. An exception to this is Karitas, a charitable organization of the Catholic Church, which had already been registered before the Decree came into force. As case law has evolved, it has reached the point where it allows corresponding organs or institutions of religious communities to obtain legal entity status insofar as the organ or institution is not also being organized in some other existing legal form. See generally *Zakon o zavodih* [The Institutes Act], Official Gazette RS, No. 12/1991, *Zakon o društvih* [The Societies Act], RS Nos. 60/1995, 49/1998; *Zakon o gospodarskih družbah* [The Companies Act], Official Gazette RS, Nos. 30/1993, 29/1994, 82/1994, 20/1998, 32/1993, 37/1998, 84/1998, 6/1999, 54/1999, 36/2000, 45/2001, 59/2001, 50/2002. Currently, the Office issues certificates conferring legal status to representative constituent parts of religious communities if these constituent parts receive a certificate issued by a competent organ of the religious community. Internal law of the religious communities governs which community organs are competent to issue such a certification. Thus, for example, parishes may be registered as independent legal entities if the competent church organ approves the decision and issues a certificate. For information generally about the registration of the constituent parts of a religious community, see *Constitutional Jurisprudence*, *supra* note 38, at 706–07.

70. Legal Status Act, Official Gazette RS, Nos. 15/1976, 42/1986, 5/1990, 22/1991 (1976) art. 7. The only acts of religious communities that are publicly recognized are certificates and diplomas of private religious schools. These certificates and diplomas are public documents assuming their issuing schools meet State accreditation standards, which are the same for religious and nonreligious private schools. *Id.* For example, under Article 53 of the 1991 Constitution, religious communities are not even empowered to perform marriages. Instead, they may only marry or divorce couples according to their internal law, which does not have any civil-law consequences; in other words, from the State's position, these acts are not binding.

71. See *supra* notes 60–61.

72. Legal Status Act, Official Gazette RS, Nos. 15/1976, 42/1986, 5/1990, 22/1991 (1976) art. 3. The Slovenian Constitutional Court has ruled that church organizations and institutions are bound by State law and also depend, concerning their status of legal entity, upon State regulations. According to the Court, these subjects are treated as domestic legal

out activities as religious communities. For example, registered religious communities may open a bank account and operate through it. Also, registration provides the ability to apply eventually for state funds allocated to religious communities.<sup>73</sup> Registration is also intended to protect third parties “who may inquire into [the register] to establish the existence or non-existence of a religious community, its founders and authorized representatives.”<sup>74</sup> However, there are several deficiencies in the Legal Status Act with respect to registration.

First, registration decisions of the Office are not considered administrative decisions subject to judicial review or appeal.<sup>75</sup> That is, although the Office is an organ of the Slovenian government, its actions and decisions in the process of registering religious communities are not considered “decisions” covered by administrative procedure according to The General Administrative Procedure Act.<sup>76</sup> Instead of issuing a substantive decision on the merits of an application, the Office only issues a certificate of registration, the exact legal nature of which is uncertain.<sup>77</sup> Because the Office’s actions are not considered administrative decisions, groups interested in establishing religious communities cannot appeal or request judicial review of Office actions.<sup>78</sup> As a result, religious groups are left without a remedy if the Office decides against them or makes an erroneous decision.

To correct this problem, the Office, as a representative of the Government of the Republic of Slovenia in a specified area, should conduct the procedure of registration as an administrative procedure and issue an administrative decision against which judicial review and an appeal are provided. Alternatively, based on the text of the

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entities and are also governed by positive law. Slovn. Const. Ct., Decision No. U-I-25/95 (Nov. 27, 1997), 11 OdlUS 23, Official Gazette RS, No. 5/98.

73. In 1998, the Slovenian Parliament considered an amendment to the Legal Status Act which would have also conferred nonprofit status on all registered religious communities, but it has not yet been adopted. INTERNATIONAL RELIGIOUS FREEDOM REPORT 2002, *supra* note 1.

74. *Constitutional Jurisprudence*, *supra* note 69, at 705.

75. *Id.* at 704–05.

76. The General Administrative Procedure Act, Official Gazette RS, Nos. 80/1999, 70/2000.

77. One reason why the decision is not considered substantive and eligible for administrative review is because there are no statutory minimum criteria for establishing a religious community. This issue is discussed *infra* at note 80 and accompanying text. On the other hand, religious communities are also not required by statute to apply for such recognition. Additionally, there is no case law in this area.

78. *See supra* text accompanying note 76.

statute, one could infer that the task of the Office is merely formal and that it is obliged to enter into the register of religious communities every more or less established religious community.<sup>79</sup> This deficiency in the Legal Status Act must be corrected regardless of which solution is chosen.

Second, the Legal Status Act lacks any criteria or conditions for establishing religious communities.<sup>80</sup> This lack of statutory criteria or conditions prevents the Office from refusing to register certain groups of persons who want to register themselves as religious communities even though they bear no relation to a religion.<sup>81</sup> Faced with a lack of statutory criteria for substantively examining registration petitions, the Office temporarily bridges the gap in the law in a pragmatic, well-intentioned way. It informs applicants that it assumes a religious community organized as a religious corporation under civil law is a legal entity. As such, it has a special legal framework that determines its purpose, means, manner of operation, and organizational structure.<sup>82</sup> And even though this assumption may have pragmatic value, the Act must be revised to include criteria or conditions upon which a group's application for registration as a religious community may be evaluated on its merits.

Third, the Legal Status Act fails to address the issue, and no case law yet exists in this area, of the resolution of disputes within religious communities. Such disputes are viewed as civil law disputes between two civil law subjects and not as an administrative issue.<sup>83</sup> The competence of the internal organs of religious communities in resolving such disputes is regulated by their internal rules; the State does not interfere here.<sup>84</sup> Thus, in addition to providing statutory

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79. See Legal Status Act, Official Gazette RS, Nos. 15/1976, 42/1986, 5/1990, 22/1991 (1976).

80. PREPELUH, *supra* note 9, at 9; *Constitutional Jurisprudence*, *supra* note 38, at 700; see also Šturm, *Commentary*, *supra* note 49, at 126.

81. *Constitutional Jurisprudence*, *supra* note 38, at 704–05. Under the established system of registering religious communities, the State only examines whether the information in an application violates compulsory regulations applying in the Republic of Slovenia.

82. Ideally, this legal framework should include a charter or the rules of the religious community, the name and seat of the religious community, its representatives, the intention and manner of its operation, financing information, organizational structure, and the contents of its belief. As with all legal entities, these aspects of the charter should not contradict state regulations. See *supra* note 73 and accompanying text.

83. *Constitutional Jurisprudence*, *supra* note 38, at 706–07.

84. *Id.* at 707.

criteria qualifying a group for status as a religious community, any revision of the Legal Status Act should also clarify or provide the means for resolving disputes among differing religious factions.

### *B. Religion and Education*<sup>85</sup>

#### *1. The Education Act*

The basic statute governing education is the Organization and Financing of Education Act (“Education Act”).<sup>86</sup> The Education Act lists autonomy as one of the goals of child-rearing and education.<sup>87</sup> Under the Act, this concern for autonomy is manifest in extracurricular “‘types and varieties of knowledge and persuasion,’ and by ensuring the optimal development of individuals irrespective of their religious belief.”<sup>88</sup> Accordingly, the Act requires that schools be religiously neutral and autonomous of religious communities. Additionally, this principle of autonomy prohibits discrimination against any religious belief and urges principled tolerance. Laws governing education, however, function more strictly than general ideas of positive neutrality.<sup>89</sup>

Although initially the restrictions on education were extremely strict, requiring the Constitutional Court to declare certain portions

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85. This Section borrows substantially from my article, Lovro Šturm, *Church and State in Slovenia*, in 1 LAW AND RELIGION STUDIES, LAW & RELIGION IN POST-COMMUNIST EUROPE 327, 341 (Silvio Ferrari & W. Cole Durham, Jr. eds., 2003) [hereinafter Šturm, *Church and State in Slovenia*].

86. Act on Organization and Financing of Child Rearing and Education, Official Gazette RS, Nos. 12/1996, 23/1996, 22/2000, 64/2001, 101/2001, 108/2002, 24/2003, 34/2003, 34/2003, 79/2003 (new official text) [hereinafter Education Act]. Besides the Education Act, statutes specific to a particular field also regulate the operation of educational organizations. Such statutes include the Kindergartens Act, Official Gazette RS, Nos. 601-01/90-1/8, 601-01/90-1/9, 601-01/90-1/20, the Elementary Schools Act, Official Gazette RS, No. 12/1996, the General Secondary Schools Act Official Gazette RS, No. 12/1996, the Professional Education Act, Official Gazette RS, No. 12/1996, the Education of Adults Act, Official Gazette RS, No. 12/1996, the Institutes Act, Official Gazette RS, No. 12/1991, and statutes which regulate the rights of children and minors with special needs and the rights of the Italian and Hungarian national communities. *Constitutional Jurisprudence*, *supra* note 69, at 711–12.

87. Education Act, Official Gazette RS, Nos. 12/1996, 23/1996, 22/2000, 64/2001, 101/2001, 108/2002, 24/2003, 34/2003, 34/2003, 79/2003.

88. *Constitutional Jurisprudence*, *supra* note 38, at 712; *see also generally* Education Act, discussed *supra* note 86.

89. *See infra*, Section V for a more detailed discussion of neutrality.

unconstitutional, the prohibitions on religion in education are still relatively stringent. At first, the Education Act, originating from a strict interpretation of the constitutional provision separating the State and religious communities, explicitly prohibited certain religious activities.<sup>90</sup> These prohibitions applied both in public kindergartens and schools, as well as in private kindergartens and schools that have been granted state licenses.<sup>91</sup> Since the Constitutional Court ruled in 2001 that the prohibition concerning private kindergartens and schools that have been granted state licenses is unconstitutional,<sup>92</sup> the Education Act was consequently amended in 2002.<sup>93</sup>

## *2. Private religious schools*

The Education Act broadly separates educational institutions into two spheres, public and private. In Slovenia, municipalities and local communities establish public kindergartens and elementary schools while the State generally establishes and finances secondary schools. Urban municipalities may also establish general secondary schools by agreement with the State.<sup>94</sup> Private schools, on the other hand, may be freely established.<sup>95</sup> This means that schools, in order to be properly

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90. Education Act, Official Gazette RS, Nos. 12/1996, 23/1996, 22/2000, 64/2001, 101/2001, 108/2002, 24/2003, 34/2003, 34/2003, 79/2003.

91. The only exception to this concerns private schools that were licensed prior to the coming into force of the Education Act. *Id.*

92. Slov. Const. Ct., Decision No.U-I-68/98 (Nov. 22, 2001), 10 Odl.US 192, Official Gazette RS, No. 101/2001. The prohibition within the Education Act of religious activities in private kindergartens and schools that have been granted state licenses is unconstitutional. However the Constitutional Court confirmed the validity of the existing enactment that excludes completely each and every religious activity from public kindergartens and schools. The Court's reasoning was that owing to the rights of the nonbelievers and the principle of the separation it is necessary in a democratic society to ban religion completely from public educational institutions, not only from the curriculum, but also from the school premises.

93. Official Gazette RS, No. 411-01/90-16/44 (2002). However, certain restrictions on religion in education remained. See *infra* Part IV.B.3 for a discussion of these restrictions.

94. Education Act, Official Gazette RS, Nos. 12/1996, 23/1996, 22/2000, 64/2001, 101/2001, 108/2002, 24/2003, 34/2003, 34/2003, 79/2003; see also *Constitutional Jurisprudence*, *supra* note 38, at 711.

95. *Constitutional Jurisprudence*, *supra* note 38, at 711; see also generally Education Act, Official Gazette RS, Nos. 12/1996, 23/1996, 22/2000, 64/2001, 101/2001, 108/2002, 24/2003, 34/2003, 34/2003, 79/2003. School founders may be either domestic or foreign legal entities; however, only domestic natural persons or legal entities may establish elementary schools. *Constitutional Jurisprudence*, *supra* note 38, at 716. In Slovenia there is no private elementary school and there are 448 public elementary schools (with nine-year programs). Among 130 secondary schools there are four private religious general secondary schools (i.e., 3% of

established, need merely “enter an educational organization into the court register or any other appropriate register.”<sup>96</sup> Private schools are free to adopt their own educational programs. Additionally, private schools have complete freedom to enroll students and to determine admission criteria.<sup>97</sup> Many private schools do “not mention registration for either the followers of other religions or for atheists, yet their students must adjust themselves to the manner of work, orientation, and programs of these [private] schools, including [attending] religious lessons as a mandatory course.”<sup>98</sup> The certificates of the present private religious schools (general secondary schools) are recognized as public documents.

*a. Curriculum.* Although, generally, private schools are free to develop their own curriculum and admissions programs, if a private school wishes to obtain state licensing, it must obtain approval from the Government of Slovenia, or from its competent professional council, certifying that the school’s educational program meets the same educational standards as established public educational programs.<sup>99</sup> These private institutions may perform educational programs certified under the same standards as public programs. Accordingly, the diplomas issued by private institutions are recognized as public documents if their conferring institutions fulfill the same standards as public schools. These statutory standards require certain minimum levels in the training and education of employees, upkeep of premises, and availability of equipment. Licensing a private school,

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secondary schools or 0.7% of all schools). Such information was given to the author from the Ministry of Science, Education and Sports by email on his request in November 2003.

96. *Constitutional Jurisprudence, supra* note 38, at 716; *see also* Education Act, Official Gazette RS, Nos. 12/1996, 23/1996, 22/2000, 64/2001, 101/2001, 108/2002, 24/2003, 34/2003, 34/2003, 79/2003. Also, the Slovenian “legal order does not envisage any difference between private religious kindergartens and schools and other private kindergartens and schools.” *Constitutional Jurisprudence, supra* note 38, at 715. The Education Act, “for example, regulates exclusively private schools in general and does not mention religious schools.” *Id.* Furthermore, “[r]eligious communities may establish kindergartens and schools under the same conditions as other private-law subjects.” *Id.*

97. *Id.* at 716. Based on current information, “only one out of four present private (Catholic) general secondary schools requires for registration a baptismal certificate with the notice of sacraments and a priest’s confirmation in writing for a particular” candidate’s admission. *Id.* at 717.

98. *Id.*

99. *Id.* at 716.

however, subjects that institution to the same standards and requirements as public schools.

*b. Registration.* The State supervises the registration of schools. It also supervises the educational programs of schools that want licensing, that is, when schools want their diplomas to be recognized as public documents.<sup>100</sup> Although the State does not, generally, control the internal organization of schools, it may control organization when it grants licenses, and then “statutory provisions apply *ex lege* to licensees.”<sup>101</sup> “If the State, on the basis of a public call for tenders, makes license contracts with private educational institutions for operating public services, all the provisions of [the Education Act] apply to” licensed private kindergartens and schools.<sup>102</sup> The most significant of these provisions concerns the equal rights and obligations of students and their parents, the same required quality in implementing educational programs, the internal organization, the financing of programs, and the educational conditions for professional employees.<sup>103</sup>

“The State has established the school inspectorate to supervise the [educational] programs of those schools which” are publicly licensed.<sup>104</sup> In the first phase the school inspectorate must determine whether schools should receive public recognition of their educational programs. Part of this determination rests on whether “the competent professional council of the [Republic of Slovenia] determines that these program[s] meet the same standards as public educational programs.”<sup>105</sup> The criteria used in this supervision are not statutorily defined. Private schools carrying out public programs must comply with conditions prescribed for professional employees of schools. “If teachers comply with statutory conditions (particularly concerning their education), private schools are free to choose their own faculty. Thus far, in Slovenia, there has been no case concerning the possibility of

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100. *Id.* at 711.

101. *Id.* 716.

102. *Id.* at 716–17.

103. Education Act, Official Gazette RS, Nos. 12/1996, 23/1996, 22/2000, 64/2001, 101/2001, 108/2002, 24/2003, 34/2003, 34/2003, 79/2003.

104. *Constitutional Jurisprudence, supra* note 38, at 718.

105. *Id.*



terminating an employment contract because of the nature of the school.”<sup>106</sup>

*c. Finance.* Financial supervision of schools is two-sided. First, the expenditure of public funds spent in private schools is supervised by the Court of Auditors of the Republic of Slovenia. Second, the expenditure of public funds on public programs is supervised by the Inspectorate of the Republic of Slovenia for Education and Sport.<sup>107</sup> The Court of Auditors’ supervision pays special attention to “the legality, purposefulness, efficiency, and effectiveness of such expenditure[s].”<sup>108</sup> The Court of Auditors focuses on traditional accounting issues, whereas the Inspectorate of the Republic of Slovenia for Education and Sport supervises the use of funds and the organization and implementation of public programs according to statutory criteria.<sup>109</sup>

Additionally, there are at least two ways to finance private educational facilities. “[T]hey are either granted licenses or financed directly under statute.”<sup>110</sup> First, to receive a license, a purportedly private school or kindergarten must enter into the “public network.”<sup>111</sup> Consequently, as mentioned above, all conditions that apply to public schools or kindergartens also apply equally to the licensed private school:

[Private educational facilities] must carry out the same educational program[s] and fulfill all other conditions (and equally regulate the rights and obligations of students and their parents, maintain the same quality in implementing programs, have equal internal organization and provide the equal financing of programs and educational conditions for professional employees).<sup>112</sup>

Second, according to statute, if “private kindergartens, private elementary and music schools, and private general secondary schools (but not also professional schools) [] carry out public programs,” are not licensees, and comply with statutory conditions, then they have the right to public funds amounting to eighty-five percent of the funds that

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106. *Id.*

107. *Id.* at 717.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*; *see also supra* note 103 and accompanying text.

the State or local community designate for salaries and material costs per student in public schools.<sup>113</sup> “The only condition is that the existence of the only public elementary school in the same area is . . . not threatened” by the funding of a private school.<sup>114</sup> In the three transitional years before enforcement of the statute on March 15, 1999, these private schools had the right to receive 100 percent of funds from the State.<sup>115</sup> This incentive was granted in order to stimulate the establishment of private schools. Both license and direct financing provisions would enable the support of religious private schools. “Indirect financing is, however, not regulated in the Slovenian legal system.”<sup>116</sup>

For the private religious schools that were granted licenses before the adoption of the Education Act, there are special transitional rules

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113. *Constitutional Jurisprudence*, *supra* note 38, at 717.

For schools, the following conditions are prescribed by Art. 86 of the Education Act:

- that they carry out educational programs from the first up to the final year of the school,
- that they provide or register at least two classes of the first year, or that the music school organizes in its educational music program lessons in three orchestral instruments and register at least 35 students,
- that they employ or in some other manner provide teachers or tutors necessary to implement the public program in accordance with statute and other regulations.

*Id.* at 718 n.24 (citing Education Act, Official Gazette RS, Nos. 12/1996, 23/1996, 22/2000, 64/2001, 101/2001, 108/2002, 24/2003, 34/2003, 34/2003, 79/2003).

The right of private schools to public funds also carries some restrictions concerning: the setting of tuition fees (for students who do not exceed the census for obtaining State scholarships, a maximum of 15% of the funds which are granted by the State to public schools per student), the salaries of professional employees (must not exceed the salaries of professional employees in public schools), the expenditure of public funds in private schools is supervised by the Court of Auditors of the Republic of Slovenia, the use of the expenditure of funds and particularly the organization and implementation of public programs according to statute are however supervised by the school inspectorate (the Inspectorate of the Republic of Slovenia for Education and Sport).

*Id.* “Concerning kindergartens, the salaries of educators must not exceed the salaries of educators in public kindergartens.” *Id.* (citing The Kindergartens Act art. 23, Official Gazette RS, Nos. 601-01/90-1/8, 601-01/90-1/9, 601-01/90-1/20).

114. *Id.* at 718; *see also* Education Act, Official Gazette RS, Nos. 12/1996, 23/1996, 22/2000, 64/2001, 101/2001, 108/2002, 24/2003, 34/2003, 34/2003, 79/2003.

115. Education Act, Official Gazette RS, Nos. 12/1996, 23/1996, 22/2000, 64/2001, 101/2001, 108/2002, 24/2003, 34/2003, 34/2003, 79/2003.

116. *Constitutional Jurisprudence*, *supra* note 38, at 718; Education Act, Official Gazette RS, Nos. 12/1996, 23/1996, 22/2000, 64/2001, 101/2001, 108/2002, 24/2003, 34/2003, 34/2003, 79/2003.

governing school funding.<sup>117</sup> Originally, these schools received licenses that provided for 100 percent state funding.<sup>118</sup> Under the new Education Act, they would only be entitled to 85 percent funding.<sup>119</sup> The transitional provisions of the new Act provide that the more generous 100 percent funding ends if the founders do not change their curriculum to comply with the religiously neutral provisions of the Education Act.<sup>120</sup> “Without such a transitional provision, [preexisting] licensees would either need to switch to the current system of financing in Article 86 of [the Education Act] (i.e. to 85% funding), or entirely assume public educational programs, in order to preserve their licenses.”<sup>121</sup> If they assumed public educational programs, they would need to respect the prescribed autonomy of schools and would be prevented from carrying out their religious activities.

### *3. Religious education in public and private schools*

Whether a school is public or private but licensed under the State, the State places certain restrictions and prohibitions on a school's interaction with religion. Generally, public schools (and kindergartens) must be neutral vis-à-vis religion.<sup>122</sup> Additionally, however, there are certain restrictions or prohibitions placed on public schools. For example, school lessons on religion that are taught with the goal to educate children in a particular religion are forbidden; lessons in which religious communities decide on the content of those lessons, content of textbooks, educational criteria of teachers, the suitability of a particular teacher for teaching, and the organization of observances in school are also prohibited.<sup>123</sup>

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117. *Constitutional Jurisprudence, supra* note 38, at 718. These schools were organized and operated under the Republic of Slovenia 1991 Act on the Organization and Financing of Child Rearing and Education. Their licenses are dependent on meeting the state educational and instructional requirements in force before the Education Act.

118. Education Act art. 86, *as amended* Official Gazette RS, no. 23/1996.

119. *Id.*

120. *Id.*

121. *Constitutional Jurisprudence, supra* note 38, at 715. These pre-existing licensees are three Catholic general secondary schools: the Bishop's Classical General Secondary Schools in Ljubljana, the Secondary Religious School in Vipava, and the Secondary Religious School in Želimiše. *Id.*; *see also* Education Act, Official Gazette RS, Nos. 12/1996, 23/1996, 22/2000, 64/2001, 101/2001, 108/2002, 24/2003, 34/2003, 34/2003, 79/2003.

122. *Constitutional Jurisprudence, supra* note 38, at 712.

123. Education Act, Official Gazette RS, Nos. 12/1996, 23/1996, 22/2000, 64/2001, 101/2001, 108/2002, 24/2003, 34/2003, 34/2003, 79/2003; *Constitutional Jurisprudence, supra* note 38, at 712.

In special cases, the competent Minister may allow religious lessons on the premises of kindergartens and schools.<sup>124</sup> Such lessons are only allowed if there are no other “appropriate premises” in the local community.<sup>125</sup> Additionally, such religious instruction requires the headmaster’s approval and must be taught outside the regular curriculum and regular operation of the school.<sup>126</sup> In order to qualify under this requirement, there must be no premises whatsoever available in the local community. If premises exist, their condition must be bad enough to pose a health and security risk, or the premises must be more than four kilometers away from the kindergarten or the school. If the premises are less than four kilometers away from the kindergarten or the school, traveling to the premises must threaten the safety of the children.<sup>127</sup>

Although “[t]he Constitution does not regulate religious lessons,” the Education Act “explicitly prohibits religious lessons intended to educate children to follow [a] particular religion.”<sup>128</sup> This prohibition applies to public schools and kindergartens as well as to private schools and kindergartens that have been granted licenses. One law, the Elementary Schools Act, mandates that schools must provide nonreligious lessons on religion and ethics in the framework of their elective courses.<sup>129</sup> Thus, “[a]ll religious communities have an opportunity to organise religious lessons on their premises any time they want, but this is not relevant for the school or the State.”<sup>130</sup> What the Elementary Schools Act’s mandate really concerns is “the private matter of students.”<sup>131</sup>

Generally, religious lessons in public schools are prohibited. However, in unlicensed private religious schools, religious lessons may be—and usually are—mandatory. Statutes prohibit religious

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124. *Constitutional Jurisprudence, supra* note 38, at 712.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.* at 713.

129. The Elementary Schools Act art. 17, para. 2, Official Gazette RS, No. 12/1996.

130. *Constitutional Jurisprudence, supra* note 38, at 713. Regarding religious lessons, the Religious Communities Legal Status Act states that religious communities may hold them on premises designated for observances and other premises where a religious community permanently carries out its religious activities. *Id.* at 713; Legal Status Act, Official Gazette RS, Nos. 15/1976, 42/1986, 5/1990, 22/1991 (1976). Minors, however, can only attend these lessons if they consent and have the consent of their parents or guardian. *Id.*

131. *Constitutional Jurisprudence, supra* note 38, at 713.

observances, such as prayer meetings or benedictions, from being held in public schools and kindergartens and in private schools and kindergartens that have been granted licenses.<sup>132</sup> The prohibitions against a public or privately licensed school's adherence to religious observances extend to the display of religious symbols, such as a cross or crucifix, and not just to religious lessons.<sup>133</sup> This prohibition, however, does not reach as far as private schools that were granted licenses before the statute came into force.<sup>134</sup> "In these schools prayers are permitted but are not mandatory."<sup>135</sup> Also, while schools cannot display a crucifix or cross, students are permitted to wear symbols worshipping God. These activities are considered beyond the control of the school.<sup>136</sup> Thus, private schools generally have control over their religious observances and the Constitutional Court has ruled that some restrictions are unconstitutional but other restrictions have remained. Essentially, religious activities in private schools must be outside the regular schedule, and the regular program must not be interrupted in time or in premises.

### *C. The Media and Radio and Television Acts*

The separation of church and state in the press, radio, television, and film is regulated in Slovenia by the Media Act<sup>137</sup> and the Radio and Television Act ("RTV").<sup>138</sup> First, the Media Act provides for the freedom of public information and regulates the rights and duties of

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132. *Id.*; see also Education Act, Official Gazette RS, Nos. 12/1996, 23/1996, 22/2000, 64/2001, 101/2001, 108/2002, 24/2003, 34/2003, 34/2003, 79/2003.

133. Although legislation does not explicitly prohibit or allow displaying a crucifix or the cross in schools, these symbols are prohibited in practice as violating the principle of separation of the State and religious communities. *Constitutional Jurisprudence, supra* note 38, at 714. "However, there is no information indicating that any public school has ever tried to hang a cross or a crucifix. The Constitutional Court yet adjudicated such a case." *Id.*

134. See Education Act, Official Gazette RS, Nos. 12/1996, 23/1996, 22/2000, 64/2001, 101/2001, 108/2002, 24/2003, 34/2003, 34/2003, 79/2003. Among these private schools licensed before the statute entered into force are three Catholic general secondary schools. See *supra* text accompanying notes 117–121.

135. *Constitutional Jurisprudence, supra* note 38, at 714.

136. *Id.* Thus far, there has been no case in which a school has prohibited students from wearing or asserting symbols worshipping God or otherwise restricting this right. Similarly, the Constitutional Court has not yet adjudicated such a case. *Id.* at 714–15.

137. The Media Act, Official Gazette RS, Nos. 35/2001, 54/2002.

138. The Radio-Television of Slovenia Act, Official Gazette RS, Nos. 18/1994, 29/1994, 73/1994, 88/1999, 90/1999.

the media and journalists generally.<sup>139</sup> However, explicitly exempted from the concept of the print media are bulletins, press, and other forms of publishing information intended exclusively for internal Church organizations.<sup>140</sup> Thus, under its provisions, religious communities can publish a public gazette if this is related to its activities.<sup>141</sup> Nevertheless, religious communities are not exempt from regulation with regard to radio or television programs. Concerning observances, there is no so-called “right” to short reports—that is, the right of every radio-television organization to report briefly (up to one minute and half) on important performances and events which are accessible to the public and are of a general interest.<sup>142</sup> Instead, radio and television stations must obtain a special permit from the corresponding religious community for such a report. In addition, religious broadcasting must not be interrupted by advertisements.<sup>143</sup>

Second, the RTV prohibits religious propaganda in programs of RTV Slovenia. In creating and preparing programs, RTV Slovenia must allow for divergent opinions and religious pluralism. As a result, RTV has already dedicated a few hours of its programming each week to religious content of various denominations.<sup>144</sup> To ensure their own protection, religious communities directly appoint one member to the thirty-six member Council of RTV Slovenia, which is the managing organ of the public institute RTV Slovenia.<sup>145</sup> Such provisions have generally been held to be constitutional under a strict or negative model of state neutrality.<sup>146</sup> However, it is likely that the RTV would be ruled unconstitutional under a more positive model as advocated in Part V.

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139. See the Media Act, Official Gazette RS, Nos. 35/2001, 54/2002, arts. 18–22.

140. See *Constitutional Jurisprudence*, *supra* note 38, at 677–718.

141. THE STATE AND RELIGIOUS COMMUNITIES, *supra* note 1, § 3.3.

142. The Radio-Television of Slovenia Act, Official Gazette RS, Nos. 18/1994, 29/1994, 73/1994, 88/1999, 90/1999.

143. *Id.*

144. CONSTITUTIONAL JURISPRUDENCE, *supra* note 38, at 677–718.

145. THE STATE AND RELIGIOUS COMMUNITIES, *supra* note 1.

146. For example, with regard to film, if the contents of a particular film would lead to incitement to intolerance, the Minister of Culture must not issue a permit for shooting such a film in Slovenia. The leading daily newspapers in Slovenia, known as *Delo* or *Dnevnik*, where the majority of obituaries are published, strictly rejects the publication of religious symbols (e.g., the cross) in the obituaries.

*D. Financing of Churches*<sup>147</sup>*1. Direct and indirect government financing*

In an effort to strike the proper balance of religious freedom, Slovenia has provided for several funding schemes for religious organizations, which allow for certain amounts of positive support of religious freedom without too much state interference. “The financing of religious communities by the State or local authorities may be direct, i.e. by granting financial means, or indirect, i.e. by providing exemption from taxes.”<sup>148</sup> First, the State may directly provide for certain state funding of religious activities.<sup>149</sup> The state may restrict direct financing to a “completely defined purpose, meaning that the religious community alone disposes of such funds” for specified purposes.<sup>150</sup> Upon request, a religious community must report to the State or municipal organ the use of such specifically allocated funds.<sup>151</sup> The government apportions this money among religious communities in proportion to registered projects. “A greater amount of aid is given in the form of social transfers” to support a part of “the costs for health and pension insurance of priests who have been paid by the State since 1991.”<sup>152</sup> Additionally, funds earmarked by the State are generally used for (co-)financing (thirty percent to fifty percent) the reconstruction of sacred objects, which form part of the national cultural heritage.<sup>153</sup> The purpose of this “co-financing” is not to fund the activities of religious communities as such, but rather to preserve the objects of Slovenian

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147. This Section borrows substantially from Šturm, *Church and State in Slovenia*, *supra* note 85, at 347.

148. *Id.* (italics omitted).

149. See THE STATE AND RELIGIOUS COMMUNITIES, *supra* note 1, § 3.1.

150. *Constitutional Jurisprudence*, *supra* note 38, at 708.

151. In actuality, the State earmarks very little money for religious communities. In 2002 the total sum was 3,790,000 Sit (16,840,00 Euro). E-mail from the Office of the Republic of Slovenia for Religious Communities (Nov. 2003) (on file with author).

152. *Constitutional Jurisprudence*, *supra* note 38, at 709. In 2002 the total sum was 282,020,000 Sit (€ 1,253,422.00) for the 1116 priests (members of the religious orders included); in other words, € 1,123.00 annually for one priest. E-mail from the Office of the Republic of Slovenia for Religious Communities (Nov. 2003) (on file with author).

153. *Constitutional Jurisprudence*, *supra* note 38, at 708. There are about 3000 such sacred objects in Slovenia. See Silvester Gaberšček, *Odsev krščanstva v kulturni dediščini* [*Reflection of Christianity in the Cultural Heritage*], 36 CERKEV V SEDANJEM SVETU [CHURCH IN THE CONTEMPORARY WORLD] Nos. 7-8, at 128 (2002).

cultural heritage whose appropriate condition is also (or particularly) in the interest of the State.

Second, the State may indirectly provide for the funding of religious activities. "Indirect financing is [accomplished] by certain exemptions or reliefs in fiscal matters."<sup>154</sup> "For instance, religious communities are exempted from paying income tax."<sup>155</sup> In practice this statute is usually interpreted to mean that, "while religious communities and societies as a rule do not pay taxes," because, presumptively, churches were established for nonprofit purposes, "they must however pay taxes on all profit-generating activity, *e.g.* on publishing and selling books."<sup>156</sup>

[Churches] are also exempted from taxes on gifts received from natural persons and legal entities. Additionally, the basis for the income tax of natural persons is reduced (by 3% at most) for voluntary contributions in money and gifts in kind; furthermore, the contributions of legal entities to religious communities are calculated as [business expenses], thereby [reducing] their taxable base. . . . Religious communities are exempted from paying sales tax on . . . products [that] protect[] the old and handicapped people and children, and from paying sales tax on their religious services. . . . Religious communities are also exempted from paying [property] tax on buildings used for their religious activities. Furthermore, they are exempted from customs for sending and receiving goods and operating services with religious and other non-profit purposes.<sup>157</sup>

154. *Constitutional Jurisprudence, supra* note 38, at 709.

155. *Id.*; *see also* The Income Tax Act, Official Gazette RS, Nos. 71/1983, 2/1994-corr., 7/1995, 44/1996. There is no church tax in Slovenia. Priests, as well as all other citizens, are bound to file their tax returns. *Constitutional Jurisprudence, supra* note 38, at 709. However, they may, like other persons with the status of so-called independent professionals, request that their profit be determined by deducting forty percent, as business expenses, from their incomes. *Id.*

156. *Constitutional Jurisprudence, supra* note 38, at 709; *see also* The Tax on Legal Entities Profits Act, Official Gazette Nos. 435-01/90-3/14, 435-01/90-3/20, 435-01/90-3/28, 435-01/90-3/51.

157. *Constitutional Jurisprudence, supra* note 38, at 709; *see also* The Income Tax Act Official Gazette RS, Nos. 71/1983, 2/1994-corr., 7/1995, 44/1996. *See generally* Zakon o prometnem davku [The Sales Tax Act], Official Gazette RS, Nos. 434-02/96-13/4, 434-02/96-13/5, 434-02/96-13/61, 434-02/96-13/70; The Construction Land Act, Official Gazette RS, Nos. 44/1997, 98/1999. The Sales Tax Statute exempts certain religious organizations from paying sales tax in certain circumstances. For example,

Karitas is by statute one of the mentioned organizations which does not pay sales tax on products obtained freely and used for the purpose for which it was established (*i.e.* for charitable activities), nor tax on the purchase of products it distributes freely



## 2. *Property rights*

In the area of property law, religious communities are, like all legal subjects of the State, equally ensured the constitutionally protected right to private property and inheritance.<sup>158</sup> For this purpose, statutes determine the manner of acquiring and enjoying property so that the economic, social, and environmental functions of such property are ensured, as are the manner and conditions of inheritance.<sup>159</sup> Generally, all legal entitlements or restrictions concerning the participation in legal transactions and fiscal matters that apply to legal entities under private law also apply to religious communities.<sup>160</sup> Specifically, churches may participate in legal transactions independently within the framework of their activities, with all rights and obligations, on their own behalf. The Legal Status Act<sup>161</sup> states that religious communities in Slovenia may independently dispose of the funds that they gain from their own property, from awards and contributions of believers for observances performed or services offered,<sup>162</sup> and from gifts, legacies, and bequests of natural persons and legal entities.<sup>163</sup> For religious services that are carried out at the request of an individual, priests may accept remuneration in money or in other typical forms (such as produce, for example).

The property rights of religious communities have changed with the introduction of denationalization. According to the Denationalization Act adopted in 1991, property nationalized under the previous regime by regulations on agrarian reform, nationalization,

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or sells within the framework of its activities (it may sell only badges, stamps and other graphic products which have its own symbol imprinted and whose content is limited to its own activity). Exemptions from sales tax do not cover automobiles, liquor, oil derivatives, tobacco products, noble metals, precious stones, scented and cosmetic products, hand made carpets, reptile-skin, genuine leather, and pornography.

*Constitutional Jurisprudence, supra* note 38, at 709.

158. SLOVN. CONST. art. 33 (1991).

159. *Id.* art. 67.

160. *See supra* Part IV.A.3 (discussing the principle that religious communities are registered as legal entities with all the same powers and limitations).

161. *See supra* text accompanying notes 49–84 for analysis of the Legal Status Act.

162. Legal Status Act, Official Gazette RS, Nos. 15/1976, 42/1986, 5/1990, 22/1991 (1976). The contributions of believers are, according to an explicit provision of statute, voluntary and are allowed to be collected on the premises intended for observances and other premises of religious communities, outside these only with a permit issued by the competent state organ (i.e., the competent administrative unit of the Ministry of the Interior).

163. *Id.*

and confiscation is to be returned to private owners.<sup>164</sup> But if this is not possible, compensation shall be given in the form of substitutive property, securities, or money.<sup>165</sup> The Denationalization Act explicitly includes, among those with claims to nationalized property, churches and religious communities,<sup>166</sup> or their institutes or orders which were operating in the territory of the Republic of Slovenia at the time the statute came into force. Legal succession is considered pursuant to their autonomous law.

Denationalization is not proceeding without complications. The Constitutional Court has frequently decided on the constitutionality of provisions of the Denationalization Act. In a 1993 decision,<sup>167</sup> which refers to the legal status of religious communities, their institutions and orders, the Constitutional Court established that the legal status of a church organization or institution is to be evaluated according to state regulations.<sup>168</sup> Religious organizations are to be treated as domestic legal entities at the time of nationalization of their property, as well as during the entire period until the adoption of the Denationalization Act, and are as such defined also by positive law (the Legal Status Act).<sup>169</sup>

In another case,<sup>170</sup> the Constitutional Court abrogated a statute which had introduced a temporary suspension of the return of property for three years in all those cases where the return of more than 200 hectares of farmlands and forests was requested by an individual claimant.<sup>171</sup> This case established that there were no justified grounds to temporarily suspend the implementation of the Denationalization Act.<sup>172</sup> The Constitutional Court reasoned that the challenged bill had envisaged only a temporary suspension concerning the return of the Catholic Church's and other religious communities' or orders' property (with the exception of sacral objects) until the adoption of a

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164. *See generally* The Denationalization Act, Official Gazette RS, No. 27/1991-I.

165. *Id.*

166. *Id.* The Roman Catholic Church is one of the biggest claimants to nationalized property.

167. Slovn. Const. Ct., Decision No. U-25/92 (March 4, 1993), 2 Odl.US 23.

168. *Id.*

169. *Id.*

170. Slovn. Const. Ct., Decision No. U-I-107/96 (Dec. 5, 1996), 5 Odl.US 174, Official Gazette RS, No. 1/97.

171. *Id.*

172. *Id.*

new statute on religious communities.<sup>173</sup> The legislature was thus allegedly given time to examine whether the Catholic Church was justified in claiming ownership on the basis of acts of the Kingdom of Yugoslavia.<sup>174</sup> The Constitutional Court emphasized that the Catholic Church and other religious communities should not be compared to large estates of feudal origin or with property relations that originate from historically proven feudal relations in making their claims to receive their property as denationalization claimants, especially in view of religious communities' role as universally beneficent institutions in the Slovenian legal system.<sup>175</sup>

*E. Religious Assistance in Public Institutions*<sup>176</sup>

In its effort to create the proper balance concerning freedom of religion, the State has provided for certain positive forms of religious assistance in public institutions, and particularly in military service. After the Slovenian Government signed special agreements with the Catholic and the Evangelical Churches in October 2000,<sup>177</sup> the Slovenian Military Service Rules were reformed in November 2000 so that Slovenian servicemen can now more easily fulfill their religious needs.<sup>178</sup> The reformed rules make it possible for the practice of religious beliefs to be an integral part of the work and life in a military institution. The rules introduce military chaplaincies led by government funded military chaplains.<sup>179</sup> In addition, it is possible for military chaplains—in a state of emergency—to help compose a testament for a military person, give lectures with religious or moral content, and conduct religious ceremonies in the event of solemn or funeral occasions.<sup>180</sup> Moreover, in the Slovenian legal system, the right of national servicemen to profess their religion uninterruptedly during military service was introduced in 2002.<sup>181</sup> National servicemen may

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173. *Id.*

174. *Id.*

175. *Id.*

176. This section borrows substantially from my article, *Church and State in Slovenia*, *supra* note 85, at 350.

177. Graselli, *supra* note 6, at 1–3, 94–106.

178. Military Service Act, Official Gazette RS, Nos. 18/1991, 74/1995, 43/2001, 86/2002.

179. *Id.*

180. *Id.*

181. *Id.*

attend observances in their spare time when their military service duties do not prevent them from leaving their headquarters, unit, or institution.

Religious assistance in other public institutions is more limited and is not paid by the State:

Persons lodged in hospitals, retirement and similar homes, who cannot attend services outside these institutions for health or other reasons, may be visited by clergy at their own or their relatives' request. Clergy may also perform services in such institutions and administer sacraments, but they must respect house regulations and must not disturb persons who have not requested the visit of the clergy and their services.<sup>182</sup>

Visiting persons in correctional facilities and closed wards of psychiatric hospitals in which persons are placed involuntarily is already an established practice. Visiting prisoners is, however, possible only if they express such a wish. There is no religious assistance for the police.

#### *F. Legal Status of Clergy*

Priests and members of religious orders have no special legal status in comparison with other individuals. There are, however, a number of incompatibilities with various positions in public life, which are not to be found in any statutory law, but are common. For example, to protect individual religious freedom and confidential relations between individuals and religious confessors, confidential religious communications are privileged in criminal, civil (litigious and nonlitigious), and administrative proceedings. Clergy are exempted from the duty to testify on what they have heard as the defendant's or party's confessor. It is left to religious confessors to decide for themselves whether to testify, but if they testify they must tell the truth. Religious confessors are exempted from the general duty to report criminal offenses or their perpetrators. Furthermore, the crime of the unauthorized betrayal of a business secret may also be committed by priests if they betray a secret they heard while carrying out their profession, unless they do this for the general good or the good of someone else, this being greater than the good of

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182. Šturm, *Church and State in Slovenia*, *supra* note 85, at 351.

keeping this secret. It is considered that they must still keep such information confidential after they cease to perform their profession. Prosecution in such cases is instituted upon a private action.<sup>183</sup>

#### V. MODERN TRENDS IN DEFINING THE CHURCH-STATE RELATIONSHIP

The provisions of the 1991 Slovenian Constitution represent a great departure from the prior approach to religious freedom under the Communist state. However, as indicated in the summary of the laws presented above, the church-state balance is still influenced by strict neutrality that limits church-state interaction. Such an approach of negative neutrality does not accord with modern views of religious freedom, which envision greater church-state cooperation, protection of positive religious freedom, and state intervention in religious activities when necessary to protect public order.

##### A. *The Cooperative Coexistence of Church and State*

The principle of coexistence of state and church, as generally accepted in Europe, is based on mutual respect and the State's recognition of a church's right to perform its religious and moral mission,<sup>184</sup> as well as on respect for church rules governing internal organization and governance.<sup>185</sup> In a secularized society, such as those that exist in western civilization, churches pursue a variety of social objectives, which, based on social ethics, particularly impact societal culture and instruction.<sup>186</sup> These religious objectives may

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183. See Penal Code of the Republic of Slovenia art. 153, Official Gazette RS, No. 63/1994.

184. Monsignor Professor Roland Minnerath, *The Position of the Catholic Church Regarding Concordats from a Doctrinal and Pragmatic Perspective*, 47 CATH. U. L. REV. 467, 468-469 (1998) ("In society, all communities, religious, philosophical, or whatever, co-exist in mutual respect. As such, the State has the responsibility to ensure that they behave according to law and that public order is preserved.").

185. See, e.g., Gerhard Robbers, *Religious Freedom in Germany*, 2001 B.Y.U. L. REV. 643, 654 (recognizing governmental "nonintervention in the internal affairs of religious communities").

186. Slovn. Const. Ct., Decision No. U-I-107/96 (Dec. 5. 1996), 5 Odl.US 174, Official Gazette RS, No. 1/97. (Churches and religious communities are universally beneficial institutions); Slovn. Const. Ct., Decision No. U-I-326/98 (Oct. 14, 1998), 7 Odl.US 190, Official Gazette RS, Nos. 67/98, 76/98. (Churches and religious communities perform an important function in society); see also JAMES E. WOOD, JR., CHURCH-STATE RELATIONS IN THE MODERN WORLD 11 (4th ed. 1999) (noting that "religion has been the great molder and purveyor of cultures and civilizations"); Sophie C. van Bijsterveld, *Freedom of Religion: Legal*

consist of complementing or improving already existing state, moral, or other goals.<sup>187</sup> Modern and free democratic societies in their constitutional and legal order ensure the protection of freedom of religion.<sup>188</sup> How this right will be implemented is defined in the relationship between state and church.<sup>189</sup> Therefore, today, freedom of religion cannot be considered separately from the institutional framework surrounding the legal status of a religious community, since this framework determines the position of the church in public life.<sup>190</sup> Freedom of belief, conscience, and conviction, as well as the freedom of church service, are not exhausted by ensuring subjective rights.<sup>191</sup> The purpose of these principles is not solely to deter state intervention.<sup>192</sup> As indispensable building blocks of a free, democratic social order and rule of law, these principles are the basis for neutrality of the state and a commandment of parity and

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*Perspectives*, in 4 LAW AND RELIGION 303, 305 (Richard O'Dair & Andrew Lewis, eds., 2001) [hereinafter van Bijsterveld, *Freedom of Religion*] (noting the interrelationship between religion, law, and culture, how they influence each other, but also noting the tension that may arise between religion and culture).

187. Graselli, *supra* note 6, at 97.

188. Universal Declaration of Human Rights, GA Res. 217A (III), U.N. GAOR, 1st Sess., art. 28, U.N. Doc. A/8190 (1948). Article 28 of the Universal Declaration of Human Rights states that “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.” *Id.*; see also WOOD, *supra* note 186, at 37 (“religious human rights has [sic] become a normative principle for most of the nations of the world and, conversely, the denial of the principle of religious human rights is almost everywhere viewed as morally and legally invalid.”). To this end, independent courts play a vital role. Van Bijsterveld, *Freedom of Religion*, *supra* note 186, at 308 (noting the special position of the court in making “freedom of religion operational and manageable”).

189. See Sophie C. van Bijsterveld, *Church and State in Western Europe and the United States: Principles and Perspectives*, 2000 B.Y.U. L. REV. 989, 990 (discussing the importance of the relationships between church and state) [hereinafter van Bijsterveld, *Church and State*]; van Bijsterveld, *Freedom of Religion*, *supra* note 186, at 301.

190. Van Bijsterveld, *Church and State*, *supra* note 189, at 990; van Bijsterveld, *Freedom of Religion*, *supra* note 186, at 305. Axel Frhr. von Campenhausen, *Religionsfreiheit* [*Religious Freedom*], in 6 HANDBUCH DES STAATSRECHTS DER BUNDESREPUBLIK DEUTSCHLAND [HANDBOOK OF CONSTITUTIONAL LAW OF THE FEDERAL REPUBLIC OF GERMANY] 369, 370 (Josef Isensee & Paul Kirchhof eds. 1989), reprinted in GESAMMELTE SCHRIFTEN, 50 JUS ECCLESIASTICUM 256, 257 (Axel Frhr. v. Campenhausen et al., eds. 1995) (“Die Religionsfreiheit darf deshalb auch heute nicht isoliert von den institutionellen Regelungen des Staatskirchenrechts gesehen werden, die die Stellung der Kirchen im öffentlichen Recht . . . aufrechterhalten.”).

191. Von Campenhausen, *supra* note 190, at 371, reprinted in GESAMMELTE SCHRIFTEN, at 258.

192. *Id.*; see also van Bijsterveld, *Freedom of Religion*, *supra* note 186, at 308 (“[R]eligion in the context of *protection of fundamental rights* requires more than simple absence of public authority interference.”).

tolerance.<sup>193</sup> This enables a free intellectual/spiritual process in which individual values are formed without state influence.<sup>194</sup>

The principle of the separation of church and state in Slovenia builds on the modern understanding that the state-church relationship in Europe accepts the state as a free, democratic social order and acknowledges that mutual respect and support for a free church in a de facto lay state can contribute to the further development and betterment of society. The absence of a state religion raises questions about whether the state is indifferent to religion in general or promotes some kind of state agnosticism. In countries where a constitution proclaims that the state arises from man as the Supreme Being, this is not the case.<sup>195</sup> However, this does not mean that if the state respects the social role of belief systems or religious convictions that it cannot be neutral in religious matters. To the contrary, the concept of the lay state may remain without religious or ideological identification,<sup>196</sup> with churches and religious groups focusing on their moral and religious mission under the expectation that the state will recognize religious independence and autonomy in the affairs of such religious organizations, specifically in proclamations of faith and morality.<sup>197</sup>

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193. Von Campenhausen, *supra* note 190, at 371, *reprinted in* GESAMMELTE SCHRIFTEN, at 258; Cf. Norman Doe & Anthony Jeremy, *Justifications for Religious Autonomy*, in 4 LAW AND RELIGION 421, 423 (Richard O'Dair & Andrew Lewis eds., 2001) (discussing tolerance as a justification for religious freedom). Doe and Jeremy's view is a mirror image of the view that freedom of religion gives rise to tolerance.

194. Von Campenhausen, *supra* note 190, at 371, *reprinted in* GESAMMELTE SCHRIFTEN, at 258 (discussing the expression of this general principle in the context of Article 4, paragraph 2 of the German Basic Law, which guarantees "[t]he undisturbed practice of religion").

195. See van Bijsterveld, *Freedom of Religion*, *supra* note 186, at 305 (noting that "[s]ecularization is no prelude to the 'end of religion'").

196. See POPE PAUL VI, PASTORAL CONSTITUTION OF THE CHURCH OF THE MODERN WORLD, *GAUDIUM ET SPES* pt. 76 (Dec. 7, 1965), available at [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_cons\\_19651207\\_gaudium-et-spes\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html) (last visited Jan. 15, 2004) (explaining that the Catholic Church, from the Second Vatican Council onwards, accepts the concept of the lay state, focusing on its moral and religious mission and expecting that the State will grant independence); see also Rik Torfs, *Church and State in France, Belgium, and the Netherlands: Unexpected Similarities and Hidden Differences*, 1996 B.Y.U. L. REV. 945, 954-55 (discussing the French conception of *laïcité modernisée*, or the modern lay state).

197. Šturm, *The Legal Status of Religious Communities*, *supra* note 7, at 391.

*B. Protective and Positive Religious Freedoms*

The modern understanding of human rights is not limited to protection against state intervention; rather, it considers these freedoms as positive, objective rights. This means not only that the state authority is obligated not to intervene (or intervene excessively) but also that the state has a duty to undertake measures and activities with the intention of guaranteeing human rights and ensuring the efficient implementation of such rights.<sup>198</sup> In other words, freedom of religion protects first against state intervention and influence in the religious sphere.<sup>199</sup> This is protective religious freedom. The state, which ensures that all are free to live in keeping with their religious convictions, is bound by individuals' freedom of religion not to hinder them in this pursuit.<sup>200</sup> Historically, freedom of religion was primarily asserted as a right in this negative sense, as a defensive measure against the excessive power of the state or a certain church.<sup>201</sup> However, freedom of religion, as a modern fundamental right, also guarantees the status of the individual not only by protecting him in his private sphere vis-à-vis the State, but also by state assurance of opportunities for individuals to live their lives freely and responsibly and to participate in matters of coexistence and in matters generally beneficial for all.<sup>202</sup> This latter aspect concerns the second, so-called positive dimension of this fundamental right, under which freedom of religion ensures the freedom of conviction or of a worldview in the social and political process.<sup>203</sup>

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198. *Id.* at 321.

199. See van Bijsterveld, *Freedom of Religion*, *supra* note 186, at 301 (noting that freedom of religion is typically "seen as a hands-off area for public authorities"). Although van Bijsterveld seems somewhat dissatisfied with the foundational starting point of religious freedom as a fundamental right, she nonetheless correctly identifies "the duty of *non-intervention*." *Id.*

200. Von Campenhausen, *supra* note 190, at 427, *reprinted in* GESAMMELTE SCHRIFTEN, at 322. This does not lead to the conclusion, however, that such "negative" religious freedom also includes the right to inhibit the positive religious freedom of others. *Id.*

201. *Id.* at 427, *reprinted in* GESAMMELTE SCHRIFTEN, at 321. Two hundred years ago the demand that the state had to ensure the greatest possible freedom for the individual meant that it had to withdraw from all areas of social life. *Id.*; see also van Bijsterveld, *Freedom of Religion*, *supra* note 186, at 302.

202. Van Bijsterveld, *Freedom of Religion*, *supra* note 186, at 308 (discussing freedom of religion as "more than a simple absence of public authority interference").

203. Robbers, *supra* note 185, at 647 ("While government must not forbid certain beliefs nor discriminate against them, it must also go further to create a positive



Within the democratic social and political framework of spiritual exchanges among converging social forces, different worldviews contribute to the formation of the common will of the community and the state.<sup>204</sup> The extreme limits of this process are reached if the democratic majority, as such, abuses its position and attempts to impose its religious convictions or worldviews on the religious or worldview of minorities.<sup>205</sup> In this context, freedom of religion, as a human right, acts as a right of the minority vis-à-vis the majority.<sup>206</sup> However, no one is injured in his freedom of religion or worldview and convictions if, in the free play of the forces of freedom and democratic society, the religious element is introduced via its citizens, who, as worshippers, are bound to their religion.<sup>207</sup> A policy of state neutrality does not prevent the state from regulating based on certain shared values exist in social life. The state is only forbidden from identifying itself with any one of the many orientations present in the pluralistic life of society.<sup>208</sup>

### *C. From Religious Toleration to Religious Freedom*

Since the time that the free and democratic orders in Europe embraced the idea that religious matters are not within the competence of the state, the state has become neutral regarding religious and worldview matters.<sup>209</sup> Contemporary understandings of freedom of religion came about with this generally asserted conviction. The toleration of the past is giving way to religious

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atmosphere . . . .”); van Bijsterveld, *Freedom of Religion*, *supra* note 186, at 309 (identifying the “positive aspect of religion” as requiring more than the mere absence of state interference by necessitating affirmative state action).

204. Von Campenhausen, *supra* note 190, at 428, *reprinted in* GESAMMELTE SCHRIFTEN, at 323; *see also* van Bijsterveld, *Church and State*, *supra* note 189, at 992; van Bijsterveld, *Freedom of Religion*, *supra* note 186, at 307.

205. Von Campenhausen, *supra* note 190, at 428–29, *reprinted in* GESAMMELTE SCHRIFTEN, at 323.

206. *Id.*; *see also* van Bijsterveld, *Church and State*, *supra* note 189, at 993 (discussing how the State must take special care “to provide a viable religious freedom to minorities when it seeks to create” the correct balance).

207. Von Campenhausen, *supra* note 190, at 429, *reprinted in* GESAMMELTE SCHRIFTEN, at 323.

208. *Id.*

209. Christian Starck, *Religion and the State*, in CONSTITUTIONALISM, UNIVERSALISM, AND DEMOCRACY—A COMPARATIVE ANALYSIS: THE GERMAN CONTRIBUTIONS TO THE FIFTH WORLD CONGRESS OF THE INTERNATIONAL ASSOCIATION OF CONSTITUTIONAL LAW 247 (Christian Starck ed., 1999).

freedom. That is, because the state does indeed make distinctions between religions and is not active only in secular society, mere toleration is no longer the focus of consideration in the area of religious freedom.<sup>210</sup> In truth, it is precisely the shift from toleration, ensured by the state, to freedom, also ensured by the state, that can be understood as the new paradigm.<sup>211</sup> Since the time of this transition, mere toleration—which is manifested by members of groups with different religious convictions or worldviews coexisting peaceably side by side with each other—has simply become a virtue in civil society.<sup>212</sup> Only in those countries that still have an official church, that maintain a legal connection between the state and a certain religion, or that provide for the head of state to also be the religious head of the state church, must the state still manifest mere religious toleration, in the traditional sense, towards those who do not belong to the state church.<sup>213</sup>

#### *D. Appropriate State Intervention in Religious Activities*

How is the relationship between state and church to be defined in European democracies under this contemporary understanding of freedom of religion?<sup>214</sup> Neutrality of the state towards religion means that the state, after disengaging from various religious functions and positions, is no longer involved in the religious needs of its subjects.<sup>215</sup> “Once religion is guaranteed as a fundamental right,” in the legal sense, “it is properly placed beyond the reach of the state . . . .”<sup>216</sup> The only exceptions are cases when the state must

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210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. This same question also constitutes the focus of Starck’s discussion. *See generally id.* at 247–51.

215. *Id.* at 247; *see also* Robbers, *supra* note 185, at 649 (“Neutrality embraces the principles of non-identification and non-intervention.”); *see also* Torfs, *supra* note 196, at 951 (discussing the debate over whether neutral freedom of religion is considered positive or negative freedom).

216. Starck, *supra* note 209, at 247; *see also* van Bijsterveld, *supra* note 186, at 300–01 (noting that the acknowledgement of freedom of religion as a fundamental right creates a “corresponding . . . duty of *non-interference* by public authority”). Although van Bijsterveld provides a more realistic notion of freedom of religion than tradition fundamental rights, the concept that the State is prevented from interfering with the individual remains pivotal to her analysis. *Id.* at 306–09.

limit the implementation of the right to freedom of religion due to reasons of public order (*ordre public*).<sup>217</sup> A country that is neutral with respect to religion and worldviews shall neither support nor hinder religions or other worldviews. The state should neither teach nor refute any individual philosophy, ideology, or morality (such as rationalism, materialism, liberalism, Marxism, etc.). And it should not give priority to lay morality. Secularism should not become the official ideology, morality, or even state religion. In the area of religious freedom, individuals must remain truly free.<sup>218</sup>

The contemporary free, democratic state order introduces, as a fundamental human right, freedom of the individual, including religious freedom.<sup>219</sup> Therefore, there are two reasons why the state no longer identifies with a given religion or some other specific conviction. First, freedom of the individual as a fundamental human right implies that the state no longer answers questions concerning the correct conviction or worldview, as it is one of the fundamental decision that a free individual must retain. Second, since people are equal in this right, the decision is not entrusted to the chosen few, but to everyone. The state may only intervene in the religiously motivated decisions of individuals in order to ensure the coexistence between individuals and in order to preserve the foundations of social order.<sup>220</sup> If individuals are equal with regard to religious or

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217. Starck, *supra* note 209, at 247; Šturm, *The Legal Status of Religious Communities*, *supra* note 7, at 392; *see also* Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 1st Sess., art. 29(2), U.N. Doc. A/890 (1948) (explaining that in exercising rights and freedoms, everyone is “subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”); *cf.* Robbers, *supra* note 185, at 647–48 (discussing the limited ability of the State to intrude into religious freedom).

218. Metoda Orehar, *Svoboda religije proti ločitvi države in religije* [*Freedom of Religion Versus Church-State Separation*], in CERKEV IN DRŽAVA [CHURCH AND STATE] 27 (Lovro Šturm ed., 2000).

219. *See, e.g., Religious Freedom in New and Future EU Member-States: Law and Practice*, introduction, available at <http://www.forum18.org/PDF/EUaccession.pdf> (“The right to freedom of religion is generally seen as one of the most fundamental rights. It is even said that this right is a good indicator for all the others.”); van Bijsterveld, *Freedom of Religion*, *supra* note 186, at 300–01.

220. *See* European Convention on Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 11, para. 2, 213 U.N.T.S. 221, available at <http://www.echr.coe.int/Convention/webConvenENG.pdf> (official website of the European Court of Human Rights) (“No restrictions shall be placed on the exercise of these rights other than [those] necessary in a democratic society in the interests of national security or public safety . . . or for the protection of the rights and freedoms of others.”).

other convictions, the state may impose objectively justified limits (or perhaps restrictions) to religious freedom. However, the limits must be such that an objective observer, viewing the limitation in favor of the freedom of conviction, would not consider the individual rejected or ignored. The more direct the link between a certain type of conduct and a (religious) conviction, the less the state should interfere. Hence, the key duty of the state is to abide by the principle of neutrality and to refrain from interfering in the freedom of the individual.<sup>221</sup>

## VI. CONCLUSION

Separation and neutrality do not preclude the state from having an equally positive relationship, or form of cooperation, in common endeavors with churches and religious communities as it already does with other organizations of the civil society.<sup>222</sup> Two hundred years ago the demand that the state had to ensure the greatest possible freedom for the individual meant that it had to withdraw from all areas of social life. Today, the service function of the state, consisting of nonmaterial and even material goods being offered to its inhabitants, is an important role. The modern social state is actively participating in various social fields and is directly or indirectly promoting those spheres.<sup>223</sup> Because religious communities perform a variety of secular and social tasks, the state, in supporting and promoting various activities in society, must not ignore or exclude religion.<sup>224</sup>

The tension between the demands of state neutrality in religious affairs and the need to recognize the positive social contributions of religious communities is particularly acute in Slovenia, where the law

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221. Šturm, *The Legal Status of Religious Communities*, *supra* note 7, at 393.

222. Van Bijsterveld, *Church and State*, *supra* note 189, at 993 (“[S]tate neutrality towards religion does not mean that church and religion should be ignored but that they should have a place in the framework of law.”). That the principle of neutrality does not prevent the State from maintaining a positive relationship with religious communities is emphasized by the fact that the Constitutional Court of the Republic of Slovenia recognized the role that religious communities play as generally useful and beneficial institutions. *See* Slov. Const. Ct., Decision No. U-I-107/96, 5 Odl.US 174 (Dec. 5, 1996), Official Gazette RS, No. 1/97, item 28.

223. *See* van Bijsterveld, *Church and State*, *supra* note 185, at 992 (noting that religion and state both participate in the social realm).

224. *See id.* (“[C]hurch and state meet in the implementation of [various social endeavors].”).

surrounding the freedom of religion is still developing. Although the 1991 Constitution assures modern religious freedom, the constitutional interpretations and legislation affecting religious communities are not always in line with modern trends in church-state separation, as this survey of the current state of Slovenian law has shown. The church-state relationship in Slovenia is influenced, on one hand, by the strict—even radical—neutrality of the former Communist state and, on the other hand, by the nation's recent embrace of modern religious freedom under the 1991 Constitution. As evident from Slovenian constitutional, legislative, and judicial approaches to religious freedoms, Slovenian law has yet to settle on either approach as it continues to oscillate between the two extremes. The 1991 Constitution was initially interpreted to favor religion, but more recently it has been interpreted under principles of strict neutrality. Likewise, the Legal Status Act, the Education Act, and the Media Act represent an ultra-strict regime of church-state separation. Unfortunately, these shifts are likely to continue but the Republic of Slovenia should recognize the beneficial role of religious communities and effectively utilize them in the true spirit of church-state cooperation.