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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**DRAFT LAW
ON CHURCHES AND RELIGIOUS COMMUNITIES
OF THE REPUBLIC OF SERBIA**

I GENERAL PROVISIONS

Freedom of religion

Article 1

In compliance with the Constitution, everyone is guaranteed the right to freedom of conscience and religion.

The freedom of religion includes: freedom to profess belief in God; freedom to have or to have not, preserve or change religion or religious conviction; freedom, either alone or in community with others and in public or private, to manifest religion or religious conviction in worship, teaching, practice and observance, cherishing and developing religious tradition; freedom to develop and advance religious education and culture.

Prohibition of religious discrimination

Article 2

No one shall be either subjected to coercion which could threaten the freedom of religion or be coerced to declare his religion, religious belief or its absence thereof.

No one shall be disturbed, discriminated or privileged due to his/her religious convictions, affiliation or non-affiliation to a religious community, or due to participation or non-participation in religious services or due to practicing or not practicing all guaranteed religious freedoms and rights.

There is no state religion.

Restrictions to religious freedom

Article 3

Freedom to religion and religious belief may be subject only to such restrictions as are prescribed by the Constitution, laws and ratified international documents and are necessary in a democratic society to protect public safety, public order, moral and for protection of the freedom and rights of others.

Religious freedom may not be used in such a way to either threaten the right to life, right to health, the right of the child, right to personal and family integrity and right to property, or to provoke and instigate religious, national and racial intolerance.

II LEGAL STATUS OF CHURCHES AND RELIGIOUS COMMUNITIES

1. AUTONOMY

Entities of corporate religious freedom

Article 4

The entities of corporate religious freedom, pursuant to this Law, are Churches and religious communities, confessional communities and other religious organizations (hereinafter "Churches and religious communities").

Freedom of association and assembly

Article 5

In compliance with the Constitution, citizens have freedom of association and public assembly for the purpose of manifesting their religious belief.

In compliance with the Constitution, citizens have freedom to accede Churches and religious communities.

Autonomy of Churches and religious communities

Article 6

Churches and religious communities are independent from the state and are equal in the eyes of the law.

Churches and religious communities are free and autonomous in defining their identity.

Churches and religious communities have the right to independently regulate and conduct their order and organization and to independently conduct their internal and public affairs.

Autonomous legislation of Churches and religious communities

Article 7

The state shall not interfere with the application of autonomous legislation of Churches and religious communities.

For enforcement of the enforceable decisions and judgements passed by the competent bodies of Churches and religious communities, only at their request, the state shall provide adequate assistance in accordance with the law.

The rights of the clergy i.e. religious servants

Article 8

The clergy i.e. religious servants are elected and appointed by Churches and religious communities in compliance with their autonomous legislation.

Discharging of religious rites and duties is regulated by autonomous legislation of Churches and religious communities.

The clergy i.e. religious servants are free and independent in practicing their religious rites conducted in accordance with the autonomous legislation of Churches and religious communities.

The clergy i.e. religious servants may not be called to answer before the authorities for their acting when practicing religious rites, conducted pursuant to paragraph 3 of this Article.

Every member of the clergy i.e. religious servant is entitled to participate in all forms of public life, except when prohibited by internal rules or particular decision passed by appointing Churches and religious communities.

The state may not restrict civil or political rights of the clergy i.e. religious servants based on their religious rank or service they discharge.

A member of the clergy may not be summoned to bear witness to facts and circumstances learned about during a confession or from other confidential communications entrusted to him in discharging his duties.

If a relevant state body deprives a member of the clergy i.e. religious servant of his freedom, then it is obliged to immediately notify relevant bodies of Churches i.e. religious communities to which the member of the clergy i.e. religious servant belongs.

The state protects official uniform and its pertaining parts as well as symbols of ranks and dignity of the clergy i.e. religious servants, in accordance with autonomous legislation of Churches and religious communities.

Legal attributes of Churches and religious communities

Article 9

Churches and religious communities, which are registered pursuant to this Law, shall have the status of legal entity.

Organizational units and institutions of Churches and religious communities may be afforded attributes of legal entity in compliance with autonomous legislation of Churches and religious communities and if reported so by Churches and religious communities.

Churches and religious communities may, by their acts, amend and abolish their individual comprising parts, bodies and institutions having the attributes of legal entity.

Churches and religious communities, their comprising parts and institutions having attributes of legal entities may publicly use only their official name under which they were registered.

Legal continuity of Churches and religious communities

Article 10

The legal continuity of legal subjectivity acquired pursuant to previously valid laws on Churches and religious communities is recognized to Churches and religious communities registered pursuant to this Law.

Traditional Churches and religious communities

Article 11

The status of traditional Church is recognized to Churches with centuries-long historic continuity in Serbia, having acquired legal subjectivity pursuant to separate legislation, those being: the Serbian Orthodox Church, the Roman Catholic Church, Slovakian Evangelist Church a.v., Christian Reformist Church and the Evangelist Christian Church a.v.

The status of traditional religious communities with centuries-long historic continuity, having acquired legal subjectivity pursuant to separate legislation, those being: the Islamic Religious Community and the Jewish Religious Community.

The Serbian Orthodox Church

Article 12

This Law recognizes to the Serbian Orthodox Church the continuity of legal subjectivity it had acquired pursuant to the document titled "Nacertanije o duhovnim vlastima" (The Scheme on Ecclesiastical Authorities), adopted by the National Assembly of the Principality of Serbia on 21 May 1836 and the Law on Serbian Orthodox Church ("The Official Gazette of the Kingdom of Yugoslavia", no.269/1929).

The Serbian Orthodox Church plays highly significant historic, nation-building and civilization-building role in forming, preserving and developing of the Serbian national identity.

The Roman Catholic Church

Article 13

This Law recognizes to the Roman Catholic Church the continuity of legal subjectivity it had acquired pursuant to the Law on the Concordat between the Kingdom of Serbia and the Holy See (the decision adopted by the National Assembly of the Kingdom of Serbia on 26 July 1914; "Serbian Gazette" no.199/1914).

Slovakian Evangelist Church a.v., Christian Reformist Church the Evangelist Christian Church a.v.

Article 14

This Law recognizes to Slovakian Evangelist Church a.v., Christian Reformist Church and the Evangelist Christian Church the continuity of legal subjectivity they had acquired pursuant to the Law on Evangelist Christian Churches and the Law on Christian Reformist Church of the Kingdom of Yugoslavia ("The Official Gazette of the Kingdom of Yugoslavia", no.95/1930).

The Jewish Religious Community

Article 15

This Law recognizes to the Jewish Religious Community the continuity of legal subjectivity it had acquired pursuant to the Law on Religious Community of Jews in the Kingdom of Yugoslavia ("The Official Gazette of the Kingdom of Yugoslavia", no.301/1929).

The Islamic Religious Community

Article 16

This Law recognizes to the Islamic Religious Community the continuity of legal subjectivity it had acquired pursuant to the Law on Islamic Religious Community of the Kingdom of Yugoslavia ("The Official Gazette of the Kingdom of Yugoslavia" no.29/1930).

Confessional Communities

Article 17

Confessional communities are: Christian Baptist Church, Christian Adventist Church, the Evangelist Methodist Church, the Pentecost Church, Evangelic Christian Churches and other religious organizations registered pursuant to the Law on legal status of religious communities ("The Official Gazette of the Federal People's Republic of Yugoslavia" no.22/1953) and the Law on legal status of religious communities ("The Official Gazette of the Socialist Republic of Serbia", no.44/1977).

2. REGISTRATION

Register of Churches and religious communities

Article 18

Ministry responsible for religious affairs (hereinafter “the Ministry”) keeps the Register of Churches and religious communities (hereinafter “the Register”).

Entering Churches and religious communities into the Register

Article 19

Churches and religious communities mentioned in the above Articles 11 and 17 of this Law are entered into the Register upon submitting the relevant data to the Ministry, i.e.: name and the seat, name and the function of the person authorized to represent a Church or religious community and a reprint of the official seal and hall-mark.

Registration procedure for religious organizations

Article 20

The following documents shall be submitted to the Ministry when applying for registration of a religious organization:

- 1) name of the religious organization
- 2) address of the seat of the religious organization
- 3) name, surname and the function of the person authorized to represent the religious organization.

Religious organizations are to enclose to the application form the following documents:

- 1) the decision on founding the organization with names, surnames, number of identification documents, signatures of at least 0,001% of the Republic of Serbia citizens of age with residence in the Republic of Serbia according to the latest official census or foreign nationals with permanent residence in the territory of the Republic of Serbia;
- 2) the Statute or other written document of the religious community describing organizational structure, manner of managing the organization, rights and obligations of the members, procedure for founding the organization and its dissolution, a list of organizational units with an attribute of legal entity and other pieces of information of relevance pertaining to religious organization;
- 3) information on fundamentals of religious teachings, religious rites, religious goals and basic activities of religious organization;
- 4) information on permanent sources of income.

Name of religious organization

Article 21

The religious organization, whose name contains a name or a part of the name reflecting the identity of Churches, religious communities or religious organization already entered into the Register or which had already filed an application for registration, may not be entered into the Register.

Deliberation on the application for entering into the Register

Article 22

The Ministry shall issue a decision on application for registration in the Register within 60 days upon the receipt of proper application and required documents.

In the event of incomplete application or if the stated name is contrary to Article 21 of this Law, the Ministry shall invite the applicant to supplement or rectify the application within 30 days. If the application is not supplemented or rectified within the set period, the Ministry shall refute the application.

The Ministry passes the decision on refuting the application for entering into the Register should it be proven that the goals, teachings, rites and activities of religious organization are contrary to the Constitution and public order or they threaten life, health, freedom and rights of others, the right of the child, right to personal and family integrity and right to property.

When passing the decision on the application for registration the Ministry relies on and takes into consideration the decisions of the European Court for Human Rights, as well as administrative and court decisions relating to the registration procedure or activities of a religious organization in one or more member states of EU.

Once entered into the Register, religious organization acquires an attribute of legal entity.

Data contained in the Register

Article 23

The following data shall be entered into the Register: name of a Church, religious community or religious organization; the seat and address, organizational units and territorial organization; name, address and the function of the person authorized to represent a Church, religious community or religious organization; number and date of registration decision; number and date of deletion decision from the previous Register of legal entities, including all changes to entered data.

The Register also contains data on religious schools, cultural institutions and associations, humanitarian, charity and health organizations founded by Churches, religious communities or religious organizations, as well as the data on economic and other activities conducted by Churches, religious communities and religious organizations.

Churches, religious communities and religious organizations are obliged to notify the relevant state body on any changes to the data entered into the Register within 30 days as off their occurrence.

The Minister responsible for of religious affairs passes the regulation prescribing more closely the contents and the keeping of the Register.

Deleting from the Register

Article 24

The Ministry passes the decision on deleting from the Register:

- 1) if a Church, religious community or religious organization files a request for deleting from the Register;
- 2) if the reasons for refuting the registration occur;
- 3) if religious organization pursues the goals other than those stated when registered.

Legal remedy

Article 25

Decision on registration, refuting the application for registration, refuting the registration or decision on deleting from the Register is final and it could be challenged in the administrative proceedings.

Applicable procedure for property

Article 26

The regulation on associations shall apply to property of Churches, religious communities or religious organizations deleted from the Register.

Monitoring

Article 27

The Ministry responsible for of religious affairs shall monitor the implementation of this Law.

3. PROPERTY AND FINANCING OF CHURCHES AND RELIGIOUS COMMUNITIES

Property

Article 28

Churches and religious communities secure the funds for their activities using income stemming from their own property, from legacies, endowments and funds, inheritances, gifts and contributions, other legal business and activities on non-for-profit basis pursuant to the Law.

Churches and religious communities are independent in managing their property and funds, all in accordance with their own autonomous legislation.

Churches and religious communities may discharge an economic or any other activity in the manner and in compliance with the regulations which stipulate and define these activities.

Protection of property

Article 29

Sacral and cultural heritage of Churches and religious communities, including immovable cultural goods, may not be dispossessed.

Until the decision on restitution of property to Churches and religious communities is passed the relevant state body or the local self-government body may, at the request of a Church or religious community and pursuant to the law, cede for use the confiscated property or its parts.

Cooperation between the state and Churches and religious communities

Article 30

The state exercises cooperation with Churches and religious communities with an aim of advancing religious freedoms and achieving public good and common interest.

The state can financially support Churches and religious communities for further advancing of religious freedoms and cooperation with Churches and religious communities, to the mutual interest.

Social rights of the clergy

Article 31

The members of the clergy i.e. religious servants are entitled to health, retirement and disability insurance pursuant to the law.

With an aim of advancing religious freedoms and in agreement with Churches and religious communities, the funds for health, retirement and disability insurance of the clergy i.e. religious servants may be provided for from the budget of the Republic of Serbia pursuant relevant laws.

Should these fund be provided for from the budget of the Republic of Serbia, the Government sets the amount of funds for covering the social rights of the clergy i.e. religious servants, on equal footing and prorated to the number of congregation of Churches and religious communities as per the latest census conducted in Serbia, whereas the principle of positive discrimination may be applied to Churches and religious communities with small congregations. Churches and religious communities may found their own funds for social, retirement and disability insurance of their clergy i.e. religious servants pursuant to their autonomous legislation.

A member of the clergy i.e. religious servant who is a foreign national, discharging permanent office in compliance with the law and autonomous legislation of Churches and religious communities and having a permanent residence in the Republic of Serbia, enjoys all the rights stipulated in this Article, pursuant to the law.

Tax allowances

Article 32

In discharging the activities and securing the income pursuant to this Law, Churches and religious communities may fully or partially be exempted from tax and other dues, in compliance with the laws which introduce respective public income.

Natural persons and legal entities giving contributions and gifts to Churches and religious communities may be exempted from paying tax dues, in compliance with the laws, which introduce respective public income.

III ACTIVITIES OF CHURCHES AND RELIGIOUS COMMUNITIES

1. DISCHARGING RELIGIOUS SERVICES

Premises for discharging religious services

Article 33

Churches and religious communities perform their liturgies, religious rites and other religious activities in their temples, other buildings or other premises of their own or in rented premises.

Liturgies, religious rites and other religious activities may also be held in public i.e. open places, and places related to important historical events or individuals, pursuant to relevant laws.

As per the Constitution and autonomous legislation of Churches and religious communities, these places and time of their holding are protected and inviolable/sacred.

Liturgies, religious rites and religious activities may also be held in schools, hospitals, army and police facilities, welfare and children's institutions, state penitentiaries and other institutions and facilities.

At the request of their members or the users of their services and in accordance with their possibilities, the competent bodies of institutions referred to in the above paragraph 4 of this Article, are obliged to provide for holding of liturgies, religious rites and religious activities.

In agreement with the competent body of the institution, Churches and religious communities determine the manner and conditions under which they shall meet the requests for occasional, constant or event-related holding of religious services.

Building activity

Article 34

Churches and religious communities may independently erect temples and other buildings for the needs their religious services, including parish homes, monastery lodgings, administrative-clerical buildings, schools, boarding schools and hospitals (hereinafter "religious structures").

In compliance with the law, Churches and religious communities may also erect residential blocks, production facilities and other structures for their own needs.

When drafting urban construction plans, a competent local self-government body is obliged to take into consideration the needs of Churches and religious communities for erection of religious structures.

The erection of religious structures may be carried out upon passing of the decision by a Church or religious community, and upon obtaining necessary permits prescribed by the law and acts regulating this area, coupled with professional monitoring by the competent state body.

Competent state body is obliged to respect the right of a Church or religious community to independently organize and conduct works and to determine purpose, style and interior decoration of the structure.

Competent state body and local self-government body may anticipate in their budgets the funds for erection of buildings, their maintenance and reconstruction, in accordance with their needs and possibilities.

In compliance with the law, competent local self-government body is obliged to declare its opinion on the initiative of a Church or religious community on calling the referendum on introducing a voluntary specified-purpose tax for erecting structures, their maintenance and reconstruction.

Charity activities

Article 35

In compliance with the law, churches and religious communities may, within the framework of their social and charity activities, establish separate institutions and organizations.

Social and charity activities of Churches and religious communities are independent from their religious services.

In performing social and charity activities Churches and religious communities, referred to in paragraph 1 of this Article, are obliged to visibly post their full name.

2. EDUCATIONAL ACTIVITY

Religious education institutions

Article 36

Churches and religious communities may establish religious education institutions for the purpose of educating future religious servants, advancing spiritual and theological culture and other kindred goals (hereinafter :”religious education institutions”).

Founding of religious education institutions in compliance with general regulations

Article 37

Churches and religious communities are free to establish pre-school institutions, primary schools, high schools, vocational and fine arts secondary schools, faculties and universities pursuant to the law.

Religious education institutions within the public education system

Article 38

In compliance with the relevant laws on education, Churches and religious communities may instigate procedure for verification i.e. accreditation of religious education institution with an aim of its inclusion in the public system of education.

Religious education institutions being awarded accreditation are entitled to financing from the state budget, prorated to the number of their congregations and according to the latest census conducted in the Republic of Serbia.

With an aim of advancing religious freedoms and education, the state may also offer financial support to those religious education institutions outside the public system of education.

Autonomy of religious education institutions

Article 39

Religious education institutions have organizational and curricular autonomy.

Churches and religious communities independently establish their curricula, text books and books of reference, appoint and dismiss teaching and other staff and monitor the work of religious education institution.

In compliance with the relevant laws on education, religious education institutions included in the public system of education are obliged to honor conditions and standards pertaining to the public system of education.

Diplomas and certificates of religious education institutions

Article 40

Diplomas and certificates of accredited religious education institutions have the same legal effect as corresponding diplomas and certificates issued by the state education institutions.

Upon conducting procedure for establishing the equivalency, diplomas and certificates issued by other religious education institutions may have the same legal effect as corresponding diplomas and certificates issued by the state education institutions.

Social rights of students attending religious education institutions

Article 41

Regular students of religious education institutions are entitled to health and social protection, adequate student standard, postponement of military service, civilian military service and their parents are entitled to receiving children's allowances valid for student attending the state education institutions.

Religious teaching in public and private schools

Article 42

The right to religious teaching in public and private schools is guaranteed pursuant to the relevant Law.

3. CULTURAL ACTIVITY

Bearers of cultural and scientific activities

Article 43

Bearers of cultural and scientific activities of Churches and religious communities are monasteries, treasuries, museums, scientific and research institutions, libraries, archives, Specialized schools and institutions, artistic workshops, cultural clubs, choirs and other institutions and associations.

Religious edifices and institutions of exceptional historic, national and cultural significance enjoy special protection, attention and financial support of the state bodies and local self-government bodies.

Protection of sacral heritage and cultural goods

Article 44

In compliance with the law, Churches and religious communities are owners of their sacral heritage and cultural goods and bearers i.e. successors of copy rights.

Churches and religious communities may establish institutes for protection of sacral heritage and cultural goods. These institutes may enjoy financial support provided for from the budget of the Republic of Serbia and the budget of local self-government units.

Informatory and publishing activity

Article 45

In compliance with the Constitution and relevant laws and with an aim of advancing religious freedoms and freedom of information Churches and religious communities have the right to use public broadcasting service, as well as to independently conduct their own informatory and publishing activity.

In performing their informatory and publishing activity Churches and religious communities are obliged to visibly post their full name.

When informing the public on their activities Churches and religious communities are obliged to clearly state the nature and contents of that particular activity.

Financing cultural and scientific institutions and programs

Article 46

With an aim of advancing religious freedoms and culture and in accordance with their possibilities, competent state bodies and local self-government bodies may provide for donations to Churches and religious communities for their cultural and scientific institutions and programs. Churches and religious communities are entitled to apply, and on equal footing as any other natural or legal entity, with competent state bodies for funds aimed at realization of cultural and scientific programs.

PROVISIONAL AND FINAL PROVISIONS

Article 47

The Minister responsible for religious affairs shall pass a separate regulation for implementation of this Law within 90 days upon the date this Law takes effect.

Article 48

This Law takes effect on the eighth day upon the date of its promulgation in the "Official Gazette of the Republic of Serbia".