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DOWN BY LAW. ALTERNATIVE RELIGIOUS CONCEPTS AND THE SERBIAN LAW ON CHURCHES AND RELIGIOUS COMMUNITIES[2]

Abstract: This paper deals with the definition of alternative religious concepts. The attitude the state takes toward these religious organizations on the basis of the Law on Churches and Religious Communities is taken into consideration. The paper points to the problems in the categorization of the religious organizations that have been promoted in the Law and to the unclear status certain groups of religious communities receive as a result of it.

Key words: alternative religious concepts, the Law on Churches and Religious Communities, categorization of religious organizations.

One of the biggest problems we face in the studies of new and alternative religions is that alternative religions are mainly determined on the basis of *what they are not*, rather than on *what they are*. Thus, one of the initial theses in their definition is that the new and alternative religions operate outside of the dominant religious culture or that they are outside of the "normal" or "traditional" cultural consensus. It is hard to find a set of characteristics which could accurately describe all the groups we deal with and which will also be applicable to at least most of them – if not universal.

In a previous paper, in order to improve the terminological apparatus, we have explained in detail the proposal to start using the term "alternative religious concept" in the study of new and alternative religions, (Sinani, 2009). Bearing in mind the purpose of this paper, we will only briefly refer to

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the most important aspects of the said proposal. In order to explain the phrase alternative religious concept, it is necessary to explain all of the three terms that we have used to determine it – to explain, then, what it is that we will consider as a "concept", what does it mean when we say that it is "religious" and how do we imagine its concept of "alternation". We will start with, though it sounds paradoxical, the simplest factor – defining the term "religious". We will not engage in polemics regarding the term "religion". Instead, we will accept as satisfactory the definition of religiosity of new religious movements, offered by Eileen Barker (Barker, 2004), which implies the provision of religious or philosophical view of the world or a claim that it provides the adequate means for achieving higher goals (transcendental knowledge, spiritual awakening, self-realization etc.) and the answers to the key questions about the meaning of life and cosmology.

Further, in explaining the proposed phrase, we will also follow the clearest and the simplest definition of the term "concept". In that sense, we will regard the concept as a more or less developed ideological structure or a plan. Thus, religious concepts will represent the more or less developed religious ideological structure and, in this context, it is best to view them as permanently interdependent. It will be up to those who use these terms (expressions) to decide whether they will choose the term religion or religious concept. Considering that religion or a religious movement (new or alternative), unlike the religious concept, presumes a different but certain level of formal organization, the difference in possibilities and intentions in utilization of the terms is quite obvious.

Finally, it is necessary to explain what the term "alternative" represents in the proposed phrase. When we talk about alternativity, it implies at least two participants in the analysis of the relations and it is basically necessary to determine what is to be an alternative to what. To put it simply, when observing the alternativity of a certain phenomenon, it is almost implied that there is, tentatively, a dominant phenomenon to which the observed one will be considered as an alternative one. However, it will be further argued that things do not have to be always and exclusively viewed in such manner.

Therefore, it should be shown, in our particular case, which religious concept is an alternative to which one, that is, it is necessary to determine the reference entity and in what way actually is the considered concept an alternative to it.

Depending on which aspects of religious concepts we are going to consider as particularly significant in their (self)definition, their alternativity can be observed in at least two directions. These two directions can be called horizontal and vertical and we can apply on them the values that we can, tentatively and for the purpose of this paper, call qualitative, i.e., quantitative aspects of religious concepts. In the most reduced phrase, qualitative aspects

would refer to the preliminary plan that a group formulates and follows, while the quantitative aspects would represent an organizational plan and the level of power the group has. In doing so, we should emphasize that the "level of power" should be understood as a broadly formulated category that includes aspects such as establishment, number (massivity), tradition, the expansion of the teachings and practice, the impact they have on both, micro and macro levels etc. The preliminary plan would, in that case, represent a system of ideas, moral and ethics of each observed religious group that would be used to organize religious education and the consequential practice around them.

In this way we determine whether and when we are going to perceive the alternative religious concepts as equals (both horizontally and qualitatively) and competitive or if we are going to include the hierarchization factor into the alternativity and set the reference markers (vertically and quantitatively). Depending on the goals we set before ourselves when dealing with these problems we can give priority to one or the other aspect. It is necessary, of course, to emphasize that the proposed directions of comparison do not mutually exclude one another, i.e., the maximum parameters of quantitativity do not signify that there is a lack of quality and vice versa and every individual approach to any religious concept should accept both aspects.

Thus, if we opt for the definition of some religious group on a horizontal basis, that is, on the level of qualitative aspects, which is an approach we are pleading for in this text, we will compare it with all the religious groups that are sanctioned, i.e., observed in the group in question, that is – all the groups in the community will be mutually and equally alternative. Roman Catholic Church will, in that case, be equally alternative to the Raëlians as well as to the Islamic community and, e.g., to the International Society for Krishna Consciousness. Aetherius Society will represent an alternative to Sikhism and to the Human Potential Movement in the same way they will also be alternative to the Jehovah's Witnesses, TM-Sidhi program or to the Orthodox Church. Thus understood, what is being offered as an alternative choice is the idea for which we can agree is a religious one, whether it is a concept that has five followers and does not record a tradition longer than a few months or a multimillion community with a several centuries old tradition and a significant share in the distribution of social power. Finally, in this case, the fact that there are alternative choices would not imply the existence of one (or more) religious concept which would be perceived as a dominant one and, in relation to which we would determine the type of alternativity of the others. Someone might ask – if we are going to view all the religious ideologies in the same way and without setting the reference markers, then why wouldn't we speak about them as just religious concepts – numerous, different versions and types of religiosity? What then is the purpose of the term "alternative" in the phrase we are to use to signify these ideologies? However, in their

description alternativity represents one of their most important determinants – in the world market of religions, all these concepts represent mutually competitive phenomena and as their number grows, the competitiveness becomes more apparent. Finally, it is necessary to pose a simple question – what are the advantages this kind of approach to religions brings? At first glance, it could be argued that this kind of approach to the considered problems could only contribute to more dilemmas and disagreements. Relativization of the fragile and still non-compliant categories and analytical tools can seem like a rather clumsy approach to the phenomenon of religious exuberance. Highly specialized tools, often lead to permanent needs for additional criteria and clarification of exceptions. But, if we set the perspectives too wide apart, they lose some of their efficiency and analytical usefulness. By accepting the proposed concept we reduce confusions regarding the time, organizational and spatial aspects of the phenomena we are studying. However, a special quality of the proposed terminology is in the background.

Accepting the proposed approach, in the very selection of the subject we will be dealing with, we practically reject the idea that there are big and small, old and new, powerful and marginal religious communities. Of course, if literally understood and rigidly applied, this stance would be vulgar and ultimately – unsustainable. History of religious ideas and organizations should not be ignored or retailored and the previously mentioned differences between the religious communities are, for many different reasons, objectively significant – especially depending on which of their aspects we are dealing with. But seen as a precondition to further engagements in the exploration of religious concepts, this approach would allow us, from the very beginning, to tackle, without prejudice, all the complexities these studies inevitably carry with them.

It might be appropriate to present the above mentioned precondition as an access parameter that points us to the dimension of the relations of the religious concepts, which we should always bear in mind – regardless of which aspects of religiosity we are dealing with and in what way.

From all that's been said, it could be argued that one of the most important roles this approach has is of extremely didactic nature. To put it simply, in terms of ideas, all the religions and religious communities, no matter how big the differences between them might be, in organization, establishment, numerousity or years of existence – are competing religious concepts and they are alternatives to each other.

Therefore, as repeatedly stated, the definition of the term new or alternative religion, is not fully resolved. Different concepts have been proposed, and authors stick to their favorite terminology, but it seems that,

more than in any other discipline, in the studies of new and alternative religions, there is a silent consensus about the subject of study, so the misunderstandings of the terminological kind are not of crucial importance.

However, professional scientists from various fields of studies of religion are not the only people who deal with alternative religions and religiosity. In that sense, it is necessary that while determining the scope of the term (that we are dealing with) that we always bear in mind the dynamics of the relations or rather the dynamics of the viewing of the alternative religions that takes place in the relation social actors – media – anti-cult organizations – state and, of course – alternative religions.

Thus, e.g., in science, there are already proposals to adjust the definitions used by the researchers to those used by the anti-cult organizations in order to enter the discussion about the problems in relation to the alternative religions more readily and with more arguments (Chryssides, 2000).

However, it seems that in the previous postulations of the basic concepts of alternative religions, there hasn't been enough attention paid (outside the cabinets, in the "real time") to the way the state itself sanctions the religious life of its citizens. The aforementioned specially applies to the research done in the domestic science. Although since the introduction of the new Law on Churches and Religious Communities there have been some lively discussions and though several papers and scientific work collections on the issues of legislation and religious communities have been published, most of them deal with the rights and the status of "the minority" and "nontraditional" religious organizations, which derive from reading the new law, while there is not enough attention being paid to the problem of defining and determining the fundamental categories of religious organizations.

As already emphasized, the intention of this paper is to compensate, to some extent, for this oversight and in the following text we will try to spot and present the forms of religious organizing sanctioned by the law and to try to conclude, based on the definitions set out in the Law, what are the groups we are dealing with when we say that we are studying alternative religious concepts.

The existing Law on Churches and Religious Communities (hereinafter – the Law), enacted by the Parliament of the Republic of Serbia, at the Third session of the First regular assembling of the National Assembly of Serbia in 2006, on April 20th – it came into effect upon the publication in the Official Gazette, No 36, in the same year. The Law from 2006 has received much criticism and a high number of objections from scientists, various European commissions and referendaries, civil rights protectors as well as from the religious organizations themselves. It was pointed out that there are numerous inconsistencies and omissions in the law. Also, it was noted that there are a number of inconsistencies, especially with the Constitution of the Republic of

Serbia, other legal acts of the Republic as well as with the numerous international conventions (Vukomanović, 2008a, 2008b; Đurđević, 2009).

But, let us go back to what interests us the most, the question – which categories of religious communities are known to the Law on Churches and Religious Communities from the 2006?

According to the text of the Law, the subject of religious freedom, regarding the law, are *the traditional churches and religious communities, confessional communities and other religious organizations* (in the further text of the Law: churches and religious communities). [3]

Traditional churches and religious communities, as well as the confessional communities are further determined by the Articles 10 and 16 in the Law, while the category "other religious organizations" did not receive any further, more precise definitions in separate articles.

That way the Article 10 of the Law states:

Traditional Churches And Religious Communities

Traditional churches are those that have a centuries-long historical continuity and whose legal subjectivity was acquired on the basis of special laws, and they are: Serbian Orthodox Church, the Roman Catholic Church, Slovak Evangelical Church, Christian Reformed Church and the Evangelical Christian Church.

Traditional religious communities are those that have a centuries-long historical continuity and whose legal subjectivity was acquired on the basis of special laws, and they are: Islamic religious community and the Jewish religious community.

In the Article 16 of the Law, the way the confessional communities are determinate is as follows:

Confessional Communities

Confessional communities are all those churches and religious organizations whose legal status was regulated with an application in accordance with the Law on the Legal Status of Religious Communities ("Official Gazette" of the FPRY, No. 22/1953) and with the Law on the Legal Status of Religious Communities ("Official Gazette" of the SRS, No. 44/1977).

It is noticeable that the text of the Article 16 of the Law from 2006 defines the confessional communities as those churches and religious organizations

[3] Article 4 of the Law on Churches and Religious Communities.

whose legal status was regulated by the *application* in accordance with the laws on the legal status of religious communities from the FPRY from 1953 and SRS from 1977.

According to the current law, the status of a legal entity was received from filing an application to the state authority.

However, the Law on the Legal Status of Religious Communities from 1953 did not imply submissions of any applications or registering of religious communities. Citizens were able to freely establish religious communities and they had the same legal position as the other religious communities - no additional acts were regulated by the Law. There is the same situation with the Law on the Legal Status of Religious Communities from 1977, except that it requires the submission of applications about the establishment to the municipal law enforcement officers, but only for the purpose of having records (Djurdjevic, 2009).

By the special Law of 1993, the Law from 1977 was repealed because of its inconsistency with the Constitution that was ratified in 1990. On the legal status of the previously registered communities, which were recognized by the previous laws, there were no decisions. At this point, therefore, the continuity the law from 2006 refers to in the statement about status allocation given to the religious communities breaks, so all of the communities have been in a specific legal vacuum since 1993 (ibid.).

According to the current regulations, religious organizations that want to be registered in the Republic of Serbia can do it in three ways:

a) under the Law on Churches and Religious Communities,
b) by recognizing the registration applications that were acquired on the basis of the earlier law on the legal status of religious communities, as provided in the Rule Book on the subject of contents and methods for keeping the Register on churches and religious communities and
c) under the Law on Associations.

According to the text of Law from 2006, for the registration of churches and religious communities in the Register, an application has to be submitted to the Ministry, which, among other data, includes a decision on founding the organization with full name, identification documents numbers and signatures of the founders of at least 0.001% adult citizens of Serbia who also reside in the Republic of Serbia, according to the latest official census, or foreign nationals with a permanent residence in the territory of the Republic of Serbia.[4] Estimates based on data from the last census in 2002, with the projected values for Kosovo and Metohija, the aforementioned o, oo1% of the

[4] Article 18 of the Law on Churches and Religious Communities

population gives the number of 100 citizens of the Republic of Serbia, whose signatures are necessary in order to get a religious organization listed in the Register.

According to Article 20 of the Law, "a religious organization registered under the regulations on associations which does not apply to be listed in the Register within one year from the date of the enactment of this Law, shall not be considered a religious organization under this law." Bearing in mind that it is easier for a large number of religious organizations to register as an association of citizens, whose registration requires three adult nationals of the Republic of Serbia, it is obvious that most of them will not be sanctioned by law from 2006.

The Law on Churches and Religious Communities guarantees general religious freedom to all religious organizations, including those that are registered as religious associations, but they lose the status of a religious organization if they are not re-registered under the rules prescribed by the Law and the Rule Book on keeping the Registry, which implies the loss of rights to religious freedom and the rights that are provided by the Law on Churches and Religious Communities. They virtually become *invisible* to the Law and to the Ministry of Religion. In a perverted way, the state, by using the law regulations from 2006, has achieved the Protestant goal of an invisible church. In order to further explain the aforementioned we will show several examples of what it means when the abovementioned religious organizations remained non-registered as religious communities or as legal entities.

In that way, unregistered religious communities are not entitled to tax reliefs and may have difficulty in printing and distributing the literature and materials for presentations, when they open bank accounts, securing the seats and the space for prayer or in the property sales, for example.

Also, one of the most important consequences of the law, that is, in establishing different categories of religious organizations in the Law, is that only the children of the members of the "traditional churches and religious communities" can get religious education of their own denomination, as well as a number of problems that this situation carries with it - the inability of educating teachers, participation in the councils for the compliance of positions in education and the like.

Naturally, this kind of discrimination has been observed and is a subject of reports of the Protestant Evangelical church, which claimed that the law is inconsistent with the Charter on Human and Minority Rights and Civil Liberties and the European Convention on Human Rights and Fundamental Freedoms.

However, in 2005, the Court of Serbia and Montenegro responded that the rights of small religious communities have not been compromised, as there are other elective subjects in public schools and that their children can get religious education in their own religious schools. In this way, an analogy has

been drawn with the inability of each individual to get a school education in their native language, especially if it is a very small ethnic group.

From what's been previously said, we can assume that the Ministry of Religion applied, as a starting assumption for the enlistment into the Registry, as well as for the categorization of religious organizations, mainly those criteria that we have previously characterized as quantitative or vertical way of defining the alternativity of the religious concept.

The problem is that there are no clearly presented criteria for different categories of religious organizations, i.e., the parameters that characterize traditional churches and religious communities or confessions as such and that allow them to get into the Register, except for the references to the historical continuity, which is obscure or nonexistent. Also, the law does not prescribe the conditions or procedures for the status of traditional churches and religious communities, which makes the solutions offered by the law-makers even more ambiguous.

Seemingly paradoxical, the Law on the Legal Status of Religious Communities from 1953 and from 1977, in the way they determined the subjects of law, were closer to the proposed concept of alternative religions than the Law from 2006, since they provide in the relevant articles:

Article 1

The freedom of conscience and the freedom of religion are guaranteed to citizens of the Federal People's Republic of Yugoslavia.

Citizens of the Federal People's Republic of Yugoslavia may belong to any religion or any religious community or not belong to any of them.

Practice of religion is a private matter of the citizens.

Article 2

Citizens are free to establish religious communities.

All religious communities enjoy equal rights and all religious communities have the same legal position.

The activity of religious communities must be in accordance with the Constitution and the laws.

Article 3

Religious communities are free in performing perform religious activities and religious ceremonies.

Article 8

Religious communities and their associated bodies are legal entities under the civil law. [5]

[5] The Law on Legal Status of Religious Communities from 1953.

That is:

Article 2
Practice of religion is a private matter.
Citizens can belong to any religious community or not belong to any of them.

Article 3
Religious communities are separated from the state.

Article 4
Citizens are free to establish religious communities.
All religious communities have the same legal position.[6]

As visible in the presented articles, the Laws on the rights of religious communities from 1953 and 1977 do not distinguish "the little" and "the big", or "the traditional" and "the non-traditional" religious communities. This does not actually mean that the laws from the cited years were perfect. Given the fact that they were created in a system whose state ideology did not pay much attention to religion, it is clear that the laws in their further texts had a series of controversial decisions, but that will be the subject of another paper. In the very segment of defining the religious communities, however, these legal solutions were far more liberal and far more liberal and adjusted to the idea of religious pluralism.

However, it is time to return to the matters of the Law on Churches and Religious Communities from 2006, which is the main subject of this paper. Beside the already mentioned categorization that is used to determine the subjects of the law and the listed articles of the Law, where the three categories of religious categorizations were pointed out, "read" in its entirety, the Law provides a few more different categories and types of religious organizations. Therefore, we can recognize several layers of categorization of religious organizations in the Law which actually overlap and intersect:

1. The law itself is called the "Law on Churches and Religious Communities", thus introducing two basic categories which the law should deal with – churches and religious communities.
2. The law further distinguishes traditional churches and religious communities, confessional communities and other religious organizations. In this paragraph, the confessional communities and a vague category of "other

[6] The Law on Legal Status of Religious Communities from 1977.

religious organizations" are introduced, while the previously mentioned category – the churches, is further defined as the "traditional churches".

3. The law determines the Confessional communities as those religious communities which are recognized automatically, based on a (dubious) continuity, but implicitly recognizes the existence of other potentially confessional communities, which must submit an application in order to be registered (denominations and religious organizations on the basis of registration). In doing so, Article 16 of the Law, brings additional confusion by defining the confessional communities as churches and religious organizations.

4. Within the guarantee of religious freedom, the Law mentions the religious communities which are registered as religious associations, i.e., associations of citizens.

5. In the same context, there is a reference to the religious communities that had not been registered and, therefore, do not have the status of a legal entity.

Therefore, the Law on Churches and Religious Communities assumes the existence of at least five types of religious organizations – churches, religious communities, confessional communities, religious communities that operate as civic associations and religious communities that do not have a status of a legal entity. Positive parameters and the criteria for establishing the categories are not specified anywhere and in that way the borders between different categories are unclear.

In accordance with the statement made at the beginning of the text, even in the Law on Churches and Religious Communities we are more likely to understand what the alternative religions are not, that is, that they are not traditional churches and religious communities and that they are not confessional communities and an attempt to define most of the alternative religions would relate to the category *other religious communities*, which, in most cases consists of groups that have been registered as religious associations or even those which have not been registered at all.

Therefore, when we deal with the alternative religions in Serbia, we are, actually, interested in the civic associations and the unregistered communities, which makes the job of scientific researchers significantly more difficult and complex.

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Dawn by Law. Alternativni religijski koncepti i srpski Zakon o crkvama i verskim zajednicama

Rad se bavi određenjem alternativnih religijskih koncepata. Razmatra se odnos države prema ovim religijskim organizacijama na osnovu Zakona o crkvama i verskim zaejdnicama iz 2006. godine. U radu se ukazuje na probleme u kategorizacijama religijskih organizacija koje su promovisane u Zakonu i nejasne statuse koje, usled toga, određene grupe verskih zajednica dobijaju.

Ključne reči: alternativni religijski koncepti, Zakon o crkvama i verskim zajednicama, kategorizacija religijskih organizacija.