



# LEGISLATION AND RELIGION IN THE KINGDOM OF SERBS, CROATS AND SLOVENIANS AND THE KINGDOM OF YUGOSLAVIA

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## INTRODUCTION

Churches and religious communities retained the same legal position as in the countries that became part of the new state from the creation of the Kingdom of Serbs, Croats and Slovenians on December 1, 1918 until the adoption of the first Constitution on June 28, 1921<sup>1</sup>. The existence of numerous nations and different religions on the territory covered by the state of South Slavs decisively contributed to Regent Alexander issuing a Proclamation on January 6, 1919, guaranteeing equality of all religions in the Kingdom and confirming the elimination of the privileged position and state status of the Orthodox Church in Serbia and Montenegro agreed by the Corfu Declaration<sup>2</sup>. The complex interethnic and inter-confessional situation in the new state influenced the allied forces to raise the issue of protection of minority communities during the peace negotiations. By the Provisional Law of May 10, 1920, on the Treaty between the Allied Powers and the Kingdom of Serbs, Croats and Slovenians, signed on September 10, 1919, the new state committed itself to the right of all inhabitants to freely perform public and private rites of any religion. Confession will not be contrary to public order and morality<sup>3</sup>. The assumed international obligations and the activities of various religions in the new state, contributed to the formation of the Ministry of Religion of the Kingdom of Serbs, Croats and Slovenians, about which the King issued a decree on December 7, 1918<sup>4</sup>. According to the decree published on July 31, 1919, the Ministry of Religion exercised the supreme supervisory and highest administrative authority over all religious affairs, which belong to the state jurisdiction. Taking into account the factual situation and significant legal differences in certain areas of the new state, the administrative scope of the

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<sup>1</sup> The legal position of religious communities in the countries that became part of the Kingdom of Serbs, Croats and Slovenians is presented in detail in the following texts: Slijepcevic, Dj., *History of the Serbian Orthodox Church*, second book, Munich, 1966; Veselinović, R., *Pregled istorije karlovačke mitropolije od 1695. do 1919. godine*, str. 221-240; Durković Jakšić, LJ., *The role of the Cetinje metropolitanate in the struggle to establish a regular state in the Serbian Orthodox Church*, Boca, S., *Bishop of Dalmatia, Serbian Church in Dalmatia and the Bay of Kotor*, p. 271-290; Veselinović, R., *Serbian Orthodox Church in Bosnia and Herzegovina*, p. 319-330.

<sup>2</sup> Radić, R., *By Faith Against Faith*, Belgrade, 1995, p. 20. See also Troicki, S., *Religious Policy of the King of the Unifier*, *Letopis matice srpske*, book 343, volume 1, 1935, p. 13.

<sup>3</sup> The said Provisional Law was incorporated into the Vidovdan Constitution in Section Two - Basic Civil Rights and Duties after Article 4, *Constitution of the Kingdom of Serbs, Croats and Slovenians (Vidovdan Constitution)*, *Official Gazette of the Kingdom of Serbs, Croats and Slovenians, Special Issue (142a)*, Belgrade, June 28, 1921

<sup>4</sup> Gardašević, B., *Organization and legislation of the Serbian Orthodox Church between the world wars*, *Serbian Orthodox Church 1920-1970, monument on the 50th anniversary of the establishment of the Serbian Patriarchate*, published by the Holy Synod of Bishops of the Serbian Orthodox Church, Belgrade, 1971, p. 37-64..

Ministry has been adjusted. Complete administrative competence in the last instance, which was previously within the scope of work of the ministries for church affairs, was given to the Ministry of Religion only in Serbia and Montenegro.

The Corfu Declaration, the Proclamation of Regent Alexander and the Treaty of Saint-Germain indicated the possibility for the Constituent Assembly to accept the principle of separation of church and state and thus in a unique way resolve the existing heterogeneous situation in the legal position of confessional communities in the new state. The Constitution of June 28, 1921, abandoned the system of state churches, but did not implement the consistent principle of the separation of religious communities from the state. Religious communities have been given the status of "public institutions with a special position in the state and special privileges" and the authority to perform some public-law affairs<sup>5</sup> on behalf of the state. Vidovdan Constitution, and similar solutions were retained by the so-called Enacted constitution of September 31, 1931, which divides the adopted and recognized religious communities. The position of the adopted was given to all religious communities that were legally recognized in any part that became part of the Kingdom. The status of the recognized ones arose from the subsequent legal recognition by the bodies of the new state<sup>6</sup>. There are significant differences between individual authors in determining the number of adopted and recognized religious communities in the Kingdom of Yugoslavia. One group of authors believes that the Serbian Orthodox Church, the Catholic Church with the Greek Catholic Church, the Evangelical Church, the Reformed Church, the Baptist Church, the Methodist Church, the Nazarene Church, the Old Catholic Church, the Islamic Church and the Jewish Church had that status<sup>7</sup>. According to the second position, only the Serbian Orthodox Church, the Catholic Church with the Greek Catholic Church, the Evangelical Church, the Islamic Church and the Moses Church were

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<sup>5</sup> Stefanović, J., *Relations between Church and State*, Zagreb, 1953, p. 101. Adopted and recognized religious communities conducted on behalf of the mother state the births, marriages and deaths, and marital disputes were adjudicated by ecclesiastical courts. For members of the Islamic religious community, sharia courts also resolved property disputes

<sup>6</sup> Constitution of the Kingdom of Serbs, Croats and Slovenians (Vidovdan Constitution), Article 12, paragraph 3, Official Gazette of the Kingdom of Serbs, Croats and Slovenians, special issue (142a), Belgrade, June 28, 1921 and Constitution of the Kingdom of Yugoslavia, Article 11, paragraph 1 and 3, Official Gazette of the Kingdom of Yugoslavia, No. 200, Belgrade, September 3, 1931..

<sup>7</sup> Lazić, I., *Legal and factual position of religious communities in Yugoslavia*, Proceedings of the Religious Community in Yugoslavia, Zagreb, 1970, p. 47; Unković, V., *Religious Communities in the Conditions of the Origin and Development of the New Yugoslavia*, unpublished doctoral thesis defended at the Faculty of Law in Belgrade 1978, p. 12

adopted and recognized<sup>8</sup>. Other religious communities were banned and their members persecuted. Adopted and recognized religions had equal status before the law and could profess their rites publicly. They independently regulated internal religious affairs.

## **LAW ON THE SERBIAN ORTHODOX CHURCH**

The law stipulates that the Serbian Orthodox Church is autocephalous with the dignity of a patriarchate. Religious teaching is professed publicly, the church freely performs prescribed worship services and independently regulates church-religious affairs. Independent management and disposal of church property, funds and endowments is provided, with the prescribed restriction of performance in accordance with the Law, the church constitution and under the supreme supervision of the state. Church authorities are free to make decisions on accepting endowments intended for the realization of religious tasks and goals. The control of revenues and expenditures will be performed by the Serbian Orthodox Church according to its own accounting regulated by a special decree. The supreme supervision overall revenues and expenditures of the Church is performed by the Main Control, which performs inspections according to the indicated need, at the request of the Minister of Justice or the church bodies themselves. Property serves the purposes of the Church and may not be confiscated except in the case of expropriation provided by law. The Church as a whole, including its constituent parts and institutions, has the status of a legal entity and the ability to acquire and dispose of movable and immovable property. Spiritual, ecclesiastical-disciplinary and ecclesiastical-judicial authority belongs only to the hierarchy and is exercised through appropriate bodies and representatives. Property, endowment and fund affairs are performed by the episcopal authority in communion with the clergy and the people through self-governing bodies, which will be regulated in more detail by the church constitution. Church criminal acts and punishments will define and prescribe the church constitution. The church is represented before the state by the patriarch or his deputy, and some dioceses by the competent archbishops. The procedure for the election of the patriarch will be determined by a special law, while the manner of the election of the bishop will be provided by the church constitution. The election of the patriarch and bishop is confirmed by the king by a decree on the proposal of the Minister of Justice, drawn up in agreement with the

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<sup>8</sup> Radić, R., cited., page. 21.

President of the Council of Ministers. The property and legal interests of the Church before the state will be represented by the church bodies determined by the constitution. Church needs are financed by revenues from church goods and funds, funds from the state fee, church taxes, taxes on revenues from monastic and church property, state aid and special surcharges. Transitional and final orders regulate the status of church institutions, authorities and persons, who move from the state to the budget of the Serbian Orthodox Church and the position of dioceses abroad. The church constitution is passed by the Holy Synod of Bishops and proposed to the Minister of Justice, who, after its adoption, forwards it to the king for legalization. The Minister of Justice is authorized to prescribe all the necessary provisions for the execution of the Law by a special decree, passed with the hearing of the proposal of the Holy Synod of Bishops. The organization of the Serbian Church provided by the Law and the church constitution must be established within two years from the adoption of the Law<sup>9</sup>.

#### **LAW ON THE ISLAMIC RELIGIOUS COMMUNITY OF THE KINGDOM OF YUGOSLAVIA OF 1930**

According to the Law, all Muslims form one independent Islamic religious community headed by the reis-ul-ulema as the supreme leader. The Islamic religious community publicly professes and teaches its religion, freely performs religious rites and independently regulates religious, religious-educational and waqf affairs. The following bodies of the Islamic Religious Community have been established: the Jamaat Majlis headed by the Jamaat Imam, the Waqf-Mearif District Commission with the Sharia Judge as chairman, the Mufti's Offices, the Ulema Majlis and the Waqf-Mearif Council in Sarajevo and Skopje. The composition of the mentioned bodies, their scope of work and competencies will be provided by the Constitution of the Islamic Religious Community (IRC). The procedure for the election of the reis-ul-ulema, members of the ulema majlis and muftis will be prescribed by a special law. Reis ul ulema, members of the Ulema Majlis and the Mufti, on the proposal of the Minister of Justice, composed in agreement with the President of the Council of Ministers, is appointed by the King by decree. The Islamic community independently manages and freely disposes of religious property and endowments within the limits of the Law, its own Constitution and under the supreme supervision of the state. The competent Islamic religious authorities are

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<sup>9</sup> Law on the Serbian Orthodox Church, Official Gazette of the Kingdom of Yugoslavia, No. 269, 1929, p. 2010-2013.

free to decide on the acceptance of endowments intended for religious purposes. The Islamic Religious Community controls revenues and expenditures independently, through its competent authorities, according to the accounting procedure, which will be prescribed by a decree and under the supervision of the Main Control. The Islamic religious community and certain institutions provided by the Constitution have the status of a legal entity, which results in the ability to acquire and dispose of movable and immovable property. The Islamic religious community is represented before the state by the reis-ul-ulema or his deputy, and individual muftis by the mufti or deputies, or sharia judges in places where they are not appointed. The property and legal interests of the IRC are represented before the state bodies by the bodies provided by the constitution. The Islamic religious community meets its material needs with revenues from religious and waqf-mearif goods and funds, religious taxes, special cuts to certain independent waqfs, voluntary contributions and visas, permanent state aid and religious surcharges. Transitional and final orders stipulate that upon the entry into force of the Law, the reis ul ulema for Bosnia and Herzegovina and the supreme mufti for Serbia and Montenegro, as well as all members of the ulema mejlis, the supreme mufti and all muftis are made available. The King's decree, at the proposal of the Minister of Justice in agreement with the President of the Council of Ministers, will appoint the first reis ul ulema in Belgrade, four members of the Ulema Majlis based in Sarajevo and four members of the Ulema Majlis based in Skopje, as well as nine muftis. The Constitution of the Islamic Religious Community will be adopted at a joint session, chaired by the reis ul ulema, by all members of the ulema of the Majlis, all muftis and all members of the supreme sharia courts. The tasks performed by the previous waqf-mearif and other religious authorities will be performed by special commissions appointed by the Minister of Justice until the adoption of the Constitution of the IRC and the establishment of the organization of the new authorities<sup>10</sup>.

#### LAW ON EVANGELICAL-CHRISTIAN CHURCHES AND ON THE REFORMED CHRISTIAN CHURCH IN THE KINGDOM OF YUGOSLAVIA

According to this Law Members of the Reformed religion (Calvinists) form a special Reformed Christian church in the Kingdom. The Slovak and German Evangelical

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<sup>10</sup> Law on the Islamic Religious Community of the Kingdom of Yugoslavia, Official Gazette of the Kingdom of Yugoslavia, No. 99-X, dated 7 February 1930.

Churches may organize an Alliance to promote common church interests. The Evangelical and Reformed Churches have full freedom of public confession of faith and religious rites. Church-autonomous bodies, authorities and institutions and their organization will be provided by church constitutions. Churches independently regulate religious, educational, charitable and other cultural affairs and manage property in accordance with established principles, and within the limits of state laws and under the supreme supervision of the state. Decisions on the receipt of endowments intended for church purposes are made independently and managed under the supervision of the state endowment authorities. Churches and their autonomous bodies have the status of a legal entity and, accordingly, the possibility of acquiring and using movable and immovable property in accordance with the constitutions and within the limits of the law. The property of self-governing bodies and institutions serves only the realization of religious goals and cannot be confiscated, except in cases of expropriation provided by law. The inclusion of the Main Control in the business review is possible at the request of the church authorities or the Minister of Justice. The material resources needed by autonomous bodies and institutions to achieve the planned goals are covered by revenues from their property, church taxes and offerings, contributions and gifts, endowments and funds and political-administrative municipalities. Members of these churches are obliged to pay all duties and surcharges to cover the needs of the competent autonomous bodies and institutions. Obligations towards churches should also be fulfilled by believers who have property in a certain territory or are engaged in trade and other affairs, regardless of where they live. Correspondence with state authorities and the issuance of documents for official use, as well as written communication with other churches in the state, will be done exclusively in the state language. State and municipal officials, soldiers and students of these religions have a holiday in the sense of the law on the following days: Christmas Day, Christmas - two days, New Year, Good Friday, Easter - two days, Savior's Day, Pentecost - two days and the Feast of the Reformation (31. October). Church legislation is performed by the Synod of each church. The church constitution envisages the manner of electing the supreme spiritual elders (bishop, supreme senior) and the main secular elders. The election of supreme spiritual elders is confirmed by the king by a decree on the proposal of the Minister of Justice, drawn up in agreement with the President of the Council of Ministers, while the Minister of Justice approves the election of supreme secular elders. Priests (priests) must be

fluent in the language spoken by members of the church community. Churches are obliged to adopt constitutions on the entire organization at synods within two years, in accordance with the regulations of the Law. The synods submit the drafted constitutions to the Minister of Justice, who, after their adoption, submits them to the King for legalization. The Minister of Justice is authorized to prescribe provisions for the enforcement of the law. With the entry into force of the Law, all laws, decrees and other regulations on the subject of the law cease to be valid<sup>11</sup>.

## **LAW ON THE RELIGIOUS COMMUNITY OF JEWS IN THE KINGDOM OF YUGOSLAVIA**

The religious community of Jews is formed by all members of the Jewish religion, who live in the Kingdom of Yugoslavia, and they are guaranteed full freedom of public religion. Jews are organized by religious communities whose task is to take care of the religious and cultural needs of the membership. Religious municipalities organize the Federation, and orthodox associations, with both organizational forms, as well as individual municipalities, determining the internal organization, scope of work, rights and duties with special rules. The Minister of Justice approves the rules of the Association and the Alliance, as well as individual municipalities. Jewish religious communities and their Federation, i.e. the Association, are self-governing bodies, which independently manage cultural and charitable institutions, including religious property and funds, and under the supreme supervision of the state. The Alliance and the Association represent the central bodies of the Jewish religious communities of their religious direction in the Kingdom. It is their obligation to mediate in official communication between state authorities and individual municipalities and, at the request of the Ministry of Justice, to give opinions on draft laws and regulations concerning the religious community. Jewish organizations enforce their decisions and collect revenues. Separation and merging of municipalities can be done at the request of twenty adult and independent members, if it is proven that the procedure originated for religious reasons and that the new organizational form has the means to support officials and the work of the necessary institutions. Decisions on the establishment, separation, merger and abolition are made by the Minister of Justice on the proposal of the Association or Association in agreement with the interested municipality. Material funds for the needs of certain religious municipalities, the Federation and the Association are

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<sup>11</sup> Law on the Evangelical-Christian and the Reformed Christian Church in the Kingdom of Yugoslavia, Official Gazette of the Kingdom of Yugoslavia, April 17, 1930.



provided with income from property, religious taxes, contributions and gifts, funds from endowments and funds, giving of political municipalities and permanent state aid. The spiritual leaders of religious municipalities are rabbis and they are virile (appointed) members of municipal boards when resolving religious issues. The official language of the Jewish religious communities and their central institutions is the state language. With the entry into force, all laws, decrees and other regulations identical to the subject of the Law cease to be valid<sup>12</sup>.

## **CATHOLIC CHURCH**

The concordats of the Holy See concluded with certain states continued their legal effect within the borders of the territories, which were included in the Kingdom of SCS after the end of the First World War, but as internal state laws without the force of an international agreement. The Austro-Hungarian Concordat concluded in Vienna on August 18, 1855, and repealed by the decision of Emperor Francis Joseph on July 30, 1870, was still valid in Croatia. The complex issue of the organization of the Catholic Church in Bosnia and Herzegovina was defined by the signing of the Convention between the Holy See and Austro-Hungary on June 8, 1881. The position of the Catholic minority in Montenegro is regulated by the Concordat, which in the original is called "Agreement", signed on August 18, 1886. year, and ratified by the Montenegrin Assembly on October 7, 1886<sup>13</sup>. After many years of negotiations, the Kingdom of Serbia regulated relations with the Holy See by the Concordat ratified at the session of the Assembly in Nis on July 26, 1914. The law on the concordat between Serbia and the Holy See in Rome, as the full title of the act reads, is relatively short and contains only 21 articles<sup>14</sup>.

## **ADOPTION OF THE CONCORDAT**

During January 1919, the Government of the Kingdom of Serbs, Croats and Slovenians requested notification to the Vatican, but the recognition was refused with the motivation to wait for the outcome of the negotiations in Versailles. After the failure of the plans to save Austro-Hungary, which was insisted on by the

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<sup>12</sup> Law on the Religious Community of Jews in the Kingdom of Yugoslavia, Official Gazette of the Kingdom of Yugoslavia, No. 301, of December 24, 1929.

<sup>13</sup> Agreement between the Holy See and the Montenegrin Government, Publishing and Book Company Gece Kona ad, Belgrade 1934, p. 30-34.

<sup>14</sup>Law on the Concordat between Serbia and the Holy See, Srpske novine, No. 199 of September 3, 1914.

Vatican, with a note from the Secretary of State, Cardinal De Gaspari, on November 6, 1919. the Holy See recognized the new state. The Extraordinary Envoy and the Plenipotentiary Minister of the Kingdom of Serbs, Croats and Slovenians handed over their credentials on March 13, 1920. year, and the Apostolic Nuncio on April 6, 1920. years, thus establishing regular diplomatic relations. With the adoption of the Vidovdan Constitution, the conditions were created for Pope Benedict XV to repeal the Vatican's agreements with the states to which the territory of the new state belonged before the conference in Versailles by a special statement of November 21, 1921. After a religious poll with representatives of the Catholic Church 1921 and acquaintance with the main problems in relations and serious demands submitted by the Bishop of the Church and respecting the fact of the number of Catholics in the Kingdom, the state authorities made a decision in 1922 to begin negotiations with the Vatican to conclude the Concordat. Negotiations began in 1925. The concordat was signed in Rome on July 25, 1935 by Ljudevit Auer, Minister of Justice and Guardian of the State Seal in the Government of Milan Stojadinović, and Secretary of State Eugenia Pacelli (the future Pope Pius XII). The text of the Concordat was not published at the time of signing. It contained 38 articles and covered the following issues: general provisions; ecclesiastical provinces; hierarchy, clergy and monasticism; property position; prayer for the ruler; national minorities; marital right; Catholic action and final provisions. The Concordat recognized the Catholic Church's full right to freely and publicly carry out its mission in the Kingdom. Respecting the code of canon law, the state recognized the legal capacity and all rights of the Catholic Church and its institutions. The state authorities were obliged to provide all kinds of assistance to the Catholic Church in order to execute orders, decisions and judgments issued by the competent church bodies. With the entry into force of the Concordat, they ceased to be valid and all acts contrary to its provisions were repealed. Issues not regulated by the Concordat, which refer to church persons, will be resolved on the basis of the Code of Canon Law<sup>15</sup>.

## **CONCLUSION**

Including the parts of Austro-Hungary inhabited by the two constituent peoples of the Roman Catholic faith, as well as Bosnia and Herzegovina with a large Muslim community, the new state was multi-confessional, which excluded the possibility of establishing a state religion in the Kingdom of Serbia and Montenegro. The

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<sup>15</sup> Mužić, I., *The Catholic Church in the Kingdom of Yugoslavia*, Split, 1978, p. 16.

accepted obligation to respect the legal position acquired in the provinces included in the composition of the new state, limited the possibility of new solutions and conditioned the recognition of the full equality of Islam and traditional Protestantism. Agreed and entered and signed in various documents, it began to be forgotten and faded from the moment when the state was constituted and fierce political struggles began, which each national group used in order to take a better and stronger political position. The enactment of the Law on the Serbian Orthodox Church ended almost ten years of work marked by the bishops' incompetence and maladaptation to the new social reality, protests of the people unwilling to lose their historical influence on church affairs, theoretical dilemmas and fierce polemics of experts about the Church's constitutional position. The analysis of the Law clearly shows that the Church has significantly managed to eliminate the influence of the state and ensure independence in resolving all issues directly related to the preservation and respect of the canonical order. Restricted by constitutional provisions, using the position of a stronger negotiating party, the state retained a decisive role in the election of patriarchs and bishops, provided insight into church finances and established flexible control mechanisms in sectors of religious life that were the subject of joint work. Religious communities and the completion of legislation on it, must be viewed in the context of the events and relations of power on the political scene at the time. It is quite certain that the Muslims, thanks to their numbers, were a real political force that had to be taken into account. Due to that, the creation of a single Islamic community was delayed for years, and when it was created, it was placed under the complete control of the state. One of the goals of the changes made on January 6, 1929, was to gain the support of the Muslim population for the realization of state and national unity with the help of a religious organization. Success was possible only if Bosnian Muslims were separated from the then undisputed leader, Dr. Mehmed Spaho. The adopted legislation on the Islamic religious community enabled the first phase to include individuals willing to engage in the most important organs and bodies in order to achieve the goals of state policy, while the second priority was given to activities aimed at liberation from established state control. Law on Evangelical Christian Churches and the Reformed Christian Church and the Law on the Religious Community of Jews in the Kingdom of Yugoslavia, largely contain solutions characteristic of the laws on the Serbian Orthodox Church and Islamic Religious Community with additional provisions governing the complex relations between the German and Slovak

Evangelical Churches, as well as the Association of Jewish Religious Communities and Associations. as an organizational form of orthodox municipalities. All mechanisms of state control were retained, but also significant flexibility in matters of autonomy and property management was shown, because these were minority churches and religious communities, which always had the opportunity to internationalize their position and receive adequate assistance from patrons from abroad. The complex issue of relations with the Catholic Church and its position in the new state remained unresolved due to the unwillingness of the ruling elite and the resistance of the Serbian Orthodox Church to complete the ratification of the already signed concordat. Summarizing the above, it can be stated that the basic characteristic of the adopted religious legislation is the common provisions, which confirm that religious communities are part of the state system and that the state controls their work. The laws stipulate that the highest heads are elected by a special electoral body or other competent body, and that the election is confirmed by a decree of the king on the proposal of the Minister of Justice and the President of the Council of Ministers. The adopted laws and provisions of the Constitution of September 31, 1931, which specifies that "religions can only be recognized by law", resolve the dilemma and confirm the right to legal existence in the Kingdom of Yugoslavia to the Serbian Orthodox Church, Catholic Church, Islamic Religious Community, Evangelical Church. av (Slovak and German), the Reformed Church and the Jewish Religious Community<sup>16</sup>.

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<sup>16</sup> D. NOVAKOVIĆ, „Religious Legislation of the Kingdom of Yugoslavia”-University of Rijeka-Faculty of Law (1991) v. 33, no. 2, p. 939-965 (2012)