



**REPUBLIKA SLOVENIJA  
USTAVNO SODIŠČE**

Rm-1/02  
19 November 2003

**OPINION**

At a session held on 19 November 2003 in proceedings to review the constitutionality of the Agreement between the Republic of Slovenia and the Holy See on Legal Issues regarding the consistency of the provisions of Article 1, the second paragraph of Article 2, the first paragraph of Article 3, the first paragraph of Article 10, and the second paragraph of Article 14 of this Agreement, initiated upon the proposal of the Government of the Republic of Slovenia, the Constitutional Court

issued the following opinion:

I. Article 1 of the Agreement between the Republic of Slovenia and the Holy See on Legal Issues (hereinafter referred to as the Agreement), according to which the Republic of Slovenia and the Holy See confirm the principle that the state and the Catholic Church are each independent and autonomous within their own organisation and that the Catholic Church performs its activities freely under canon law, in accordance with the legal order of the Republic of Slovenia, is not inconsistent with the principle of sovereignty enshrined in Article 3 of the Constitution or with the principle of the separation of the State and religious communities enshrined in the first paragraph of Article 7 of the Constitution insofar as it is interpreted to entail that the Catholic Church will respect the legal order of the Republic of Slovenia when performing its activities in the Republic of Slovenia, as follows from Paragraphs 32 and 33 of the reasoning of this Opinion.

II. The constitutionally consistent interpretation of Article 1 of the Agreement is the starting-point for reviewing the consistency of the second paragraph of Article 2, the first paragraph of Article 3, the first paragraph of Article 10, and the second paragraph of Article 14 of the Agreement.

III. The second paragraph of Article 2 of the Agreement, according to which the Republic of Slovenia recognises the legal personality of territorial and personal Church institutions based in the Republic of Slovenia, which have such personality pursuant to the norms of canon law and which the Church authority must register with the competent state authority in accordance with the legal order of the Republic of Slovenia, is not inconsistent with the principle of the equality of religious communities enshrined in the second paragraph of Article 7 of the Constitution or with the principles of a state governed by the rule of law enshrined in Article 2 of the Constitution.

IV. The first paragraph of Article 3 of the Agreement, according to which the legal order of the Republic of Slovenia guarantees the Catholic Church the free pursuit of activities, liturgy, and catechesis, is not inconsistent with the principle of sovereignty enshrined in Article 3 of the Constitution, the principle of the separation of the state and religious communities enshrined in the first paragraph of Article 7 of the Constitution, or the principles of a state governed by the rule of law enshrined in Article 2 of the Constitution.

V. The first paragraph of Article 10 of the Agreement, according to which the Catholic Church has, in accordance with the legislation of the Republic of Slovenia and canon law, the right to establish and manage schools of all types and levels, dormitories for secondary school and university students, and other educational institutions, is not inconsistent with the principle of the separation of the state and religious communities enshrined in the first paragraph of Article 7 of the Constitution.

VI. The second paragraph of Article 14 of the Agreement, according to which the Republic of Slovenia and the Holy See will endeavour to continue discussing outstanding issues that are not subject of this Agreement, with the intention of settling them by mutual agreement, is not inconsistent with the principle of sovereignty enshrined in Article 3 of the Constitution or the principle of the separation of the state and religious communities enshrined in the first paragraph of Article 7 of the Constitution.

VII. When implementing the Agreement, the state authorities of the Republic of Slovenia will be required to respect the content of the provisions of the Agreement as determined by the interpretation of the Constitutional Court.

## **Reasoning**

### **A**

#### *The Statements of the Government of the Republic of Slovenia*

1. The Government proposed that, on the basis of the second paragraph of Article 160 of the Constitution and Article 70 of the Constitutional Court Act (Official Gazette RS, No. 15/94 – hereinafter referred to as the CCA), the Constitutional Court issue an opinion on the consistency of the preamble and the entire Agreement (Articles 1 to 14) with the Constitution, especially with Articles 7 and 41 thereof. In the Government's opinion, by reviewing the constitutionality of the Agreement "any possible doubt about its constitutional consistency" would be resolved, although the applicant deems that the Agreement is not inconsistent with the Constitution. The Government also informed the Constitutional Court that it had proposed that the National Assembly postpone the ratification of the Agreement until the decision of the Constitutional Court.

2. Upon the Constitutional Court's request, the Government supplemented its proposal to issue an opinion with the statement that the Constitutional Court review two issues in terms of their consistency with Article 7 of the Constitution: first, whether the entire Agreement (or several of its provisions) entails that the legal order

of the Republic of Slovenia and canon law are rendered equal and, second, whether the Agreement entails the unequal treatment of different religious communities. The Government believes that Articles 1, 2, 3, 8, 9, 10, and 12 of the Agreement undoubtedly reflect the “primacy of the legal order of the Republic of Slovenia and that the Agreement does not introduce anything new regarding the legal position of the Catholic Church in Slovenia and does not require existing legislation to be amended.” As, in the opinion of the Government, there are no provisions in the Agreement that would give the Catholic Church a privileged position in comparison to other religious communities in the country, it does not violate the principle of the equality of religious communities enshrined in the second paragraph of Article 7 of the Constitution.

3. Upon the Constitutional Court's request, the Government supplemented its proposal and defined the specific provisions of the Agreement (the preamble, Articles 1, 2, 3, 10, and 14) that were alleged to be constitutionally disputable “according to some opinions and positions expressed in the media in connection with the coordination within the coalition during the preparation of the bases and upon the signing of the mentioned Agreement”.

4. The preamble was alleged to be inconsistent with the Constitution as it does not expressly provide that the Agreement only confirms the already established legal position of the Catholic Church in the Republic of Slovenia. Such allegedly allows for “different interpretations of the Agreement”. The Government, on the contrary, believes that in particular the reference to Articles 7 and 41 of the Constitution in the Preamble [of the Agreement] demonstrates that it was not the intention of the contracting parties to interfere with the constitutional order of the Republic of Slovenia through the Agreement. The Government requested an opinion on Article 1 of the Agreement due to concerns as to whether the Agreement's wording could be construed to mean that the Republic of Slovenia recognises that the Catholic Church is not bound by the legal order of the Republic of Slovenia, and as to whether it allows, or even affords, that equal importance be given to the legal order of the Republic of Slovenia and canon law. In this regard, the Government explains that the first paragraph of this Article refers to the relation between the Republic of Slovenia and the Holy See as two subjects of international law to which the principle of independence and autonomy applies; in this paragraph, the term Catholic Church means the Universal Church, which is represented by the Holy See in international relations. The second paragraph of Article 1 refers to the Catholic Church in the Republic of Slovenia, emphasising on the one hand the freedom to pursue activities in accordance with the second paragraph of Article 7 of the Constitution, and on the other hand that such activities must be in accordance with the legal order of the Republic of Slovenia. Therefore, according to the Government, the wording of Article 1 does not interfere with the territorial and personal sovereignty of the Republic of Slovenia; on the contrary, it determines that the activities of the Catholic Church must be at all times consistent with the legal order of the Republic of Slovenia. Article 2 of the Agreement was alleged to be inconsistent with the second paragraph of Article 7 of the Constitution, as it does not explicitly provide that the Catholic Church and its institutions are legal entities[\*] under private law as provided in the Agreement on the Legal Position of the Evangelical Church in the Republic of Slovenia (signed on 25 January 2000). In the Government's opinion, it follows from the entire context of the Agreement and the rules of interpretation that the instances in question concern legal

personality under private law. The first paragraph of Article 3 of the Agreement was alleged to be inconsistent with the Constitution as it does not (explicitly) determine that all the activities of the Catholic Church in the Republic of Slovenia must be performed in accordance with its legal order. The Government believes that the first paragraph of Article 3 [of the Agreement] summarises the essence of Article 7 of the Constitution regarding the free pursuit of the activities of religious communities, which must be performed in accordance with the legal order of the Republic of Slovenia already on the basis of the second paragraph of Article 1 of the Agreement. It was argued that the Constitutional Court should review the consistency of Article 10 of the Agreement with the Constitution due to allegations that the content of this Article allows the Catholic Church to interfere with the legal regulation of public schools. In the Government's opinion, Article 10 does not interfere with the regulation of public schools as it only refers to schools that are established and managed by the Catholic Church in accordance with the legislation of the Republic of Slovenia. In connection with the second paragraph of Article 14 of the Agreement, the Government suggests that the Constitutional Court establish, whether, on the basis of that provision, the Republic of Slovenia is obliged to engage in bilateral resolution of all open issues, namely also including those that fall under the exclusive jurisdiction of the Republic of Slovenia and with regard to which the Holy See may neither cooperate nor co-decide. The Government states that, through that provision, the Republic of Slovenia did not undertake to resolve such open issues by agreement, but only to endeavour to discuss them. In the Government's opinion, the aforementioned provision of the Agreement has thus not exceeded the boundaries of courtesy that are common in treaties.

5. On 19 April 2002, the Constitutional Court received a supplemented proposal to issue an opinion, which was sent by the Minister of the Interior, the Minister of Work, Family and Social Affairs, and the Minister of Culture. In their supplement they state that, at its session held on 18 April 2002, the Government rejected their proposal to also send the documents titled "Opinion of the minority in the Government on the consistency of the Agreement with the Holy See with the Constitution" as an appendix to the supplemented Government proposal. The Constitutional Court could not consider the mentioned document as part of the applicant's submissions as it had been expressly rejected by the applicant.

## **B – I**

### *The Content of the Agreement and the Purpose of its Conclusion*

6. It is evident from the title of the Agreement, which was signed by the authorised representatives of the Holy See and the Republic of Slovenia, that it regulates specific legal issues referring to the position of the Catholic Church in the Republic of Slovenia. The preamble, which consists of four indents, reveals the circumstances that led to the conclusion of the Agreement. The first and fourth indents refer respectively to the political and historical circumstances that led to the conclusion of the Agreement, i.e. the establishment of diplomatic relations between the Republic of Slovenia and the Holy See, which followed the recognition by the Holy See of the sovereignty and independence of the Republic of Slovenia by Note No. 226/92RS, dated 23 January 1992 (Decree on the Ratification of the Agreement on the

Establishment of Diplomatic Relations between the Republic of Slovenia and the Holy See, Official Gazette RS, No. 32/92, MP, No. 7/92), and to the centuries-old historical connection between the Slovene people and the Catholic Church. The second and third indents refer to the legal acts that were taken into account by the contracting parties when concluding the Agreement. For the Republic of Slovenia, this legal act is the Constitution, in particular Articles 7 and 41 thereof, and for the Holy See, these legal acts are canon law norms and the documents of the Second Vatican Council. The Constitutional Court considered canon law norms to be the norms contained in the Code of Canon Law (hereinafter referred to as the CCL).[1] At the same time, the mentioned indents emphasise the importance of human rights and the internationally recognised principles of freedom of thought, conscience, and faith.

7. The Catholic Church actively engages not only in the area of religious matters (*res spirituales*) but also in other areas of social life that fall under the jurisdiction of the state (known as mixed matters – *res mixtae*). It follows from the wording of the Agreement that, in addition to recognising the autonomy and independence of the activities of the Catholic Church in spiritual matters, its purpose is to regulate legal issues in those areas where the activities of the Catholic Church and the state overlap or intertwine. The Agreement therefore regulates the recognition of the legal personality of Church institutions (Article 2); the performance of public religious services (the second paragraph of Article 3); the establishment of religious associations (Article 8); the establishment and management of schools (Article 10); the maintenance of cultural monuments owned by the Church (Article 11); pastoral activities in hospitals, nursing homes, prisons, and other institutions, where the free movement of persons is restricted (Article 12); and the establishment of charity and social Church institutions and organisations (Article 13). The intention to regulate these issues by the Agreement is also evident from the documents of the Mixed Umbrella Commission of the Roman Catholic Church and the Government of the Republic of Slovenia. The intention to reach an agreement between the state and the Catholic Church “in matters in which both are active” is explicitly emphasised in point 7 of the document entitled “The Constitutional Provision on the Separation of the state and Religious Communities as the Basis for the Work of the Mixed Umbrella Commission” (hereinafter referred to as the documents of the Mixed Umbrella Commission).[2]

#### *Jurisdiction and Scope of Review by the Constitutional Court*

8. On the basis of the second paragraph of Article 160 of the Constitution, the Constitutional Court is vested with the special competence of preliminary (*a priori*) constitutional review of treaties. This power only refers to reviewing the consistency with the Constitution, not with ratified treaties and the general principles of international law. The purpose of the preliminary constitutional review of treaties is to prevent that, upon the ratification of a treaty, the state assumed an obligation arising from international law that would be inconsistent with the Constitution, or that, following its ratification, it were forced to bring the treaty into line with the Constitution, which could lead to serious complications. In Opinion No. Rm-1/97, dated 5 June 1997 (Official Gazette RS, No. 40/97, and OdlUS VI, 86), the Constitutional Court held that an obligation arising from international law would be contrary to the Constitution if, upon the entry into force of the treaty in the domestic

law, it created directly applicable unconstitutional legal norms or obliged the state to adopt an internal legal act that would be contrary to the Constitution. As a treaty is the result of an agreement between the contracting parties, the Constitutional Court can neither abrogate or annul specific provisions of the treaty nor can it require the National Assembly to bring it into line with the Constitution. In deciding on the consistency of a treaty with the Constitution, the Constitutional Court cannot address the question of the appropriateness of specific solutions, and is even less able to address the question of whether the specific solutions are advantageous for the state. The provisions of a treaty in the wording in which it has been submitted for ratification are the subject of review in proceedings to issue an opinion on the consistency of a treaty with the Constitution. As is evident from the proposal and its appendices, by letter No. 080-00/2001-3, dated 24 January 2002, the Government referred the Draft Law on the Ratification of the Agreement for discussion and adoption to the National Assembly, and simultaneously proposed that it postpone the ratification until the Constitutional Court has issued its opinion.

9. The Agreement is being concluded between the Republic of Slovenia as an independent and autonomous state and the Holy See as a *sui generis* subject of international law.[3] The treaties that the Holy See, as the highest and sovereign authority of the universal Catholic Church, enters into refer to issues that are directly related to the Catholic Church in the contracting states in which particular churches are located (see Can. 368). Among the special functions of the pontifical legates, Can. 365 of the CCL also determines the conclusion “and implementation of concordats and other agreements of this type”. The Agreement that is the subject of this constitutional review belongs to “agreements of this type”. Notwithstanding the particularities of agreements between states and the Holy See (known as concordats, conventions, covenants, *modi vivendi*, protocols, or agreements), the prevailing theory of international law treats them as proper treaties that not only confirm the existing rights of contracting parties (e.g. the free pursuit of the activities of the Church), but can also create new rights and obligations for both sides.[4] The rules of the Vienna Convention on the Law of the Treaties (Official Gazette SFRY [Socialist Federal Republic of Yugoslavia], No. 30/72 – hereinafter referred to as the VCLT), which was also signed and ratified by the Holy See, apply to the interpretation of these agreements in the same way as to treaties concluded between states.[5]

10. The Constitutional Court reviewed the consistency of the challenged provisions of the Agreement with the provisions of the Constitution that the applicant explicitly stated or that logically follow from the proposal’s statement of reasons. The Agreement refers to the relationship between the Catholic Church as a religious community and the Republic of Slovenia as a state. This relationship is regulated by Article 7 of the Constitution, the first paragraph of which provides that the state and religious communities are separate (the so-called principle of the separation of the state and religious communities), and the second paragraph of which ensures religious communities equal rights and the free pursuit of their activities (the so-called principle of the equality of religious communities and the principle of the free pursuit of religious communities’ activities). The principles of the equality of religious communities and the free pursuit of their activities originate from the constitutional right to freedom of conscience determined in the first and second paragraphs of Article 41 of the Constitution, as this human the exercise of right can only be guaranteed on the basis of the equality of all religious communities and the free

pursuit of their activities. Notwithstanding the institutional relationship between the state and religious communities, the constitutional right to freedom of religion, which encompasses its positive[6] and negative[7] aspects, entails the foundation of the entire regulation of the position of religious communities, as such concerns respect for this fundamental constitutional right, which is also protected by numerous international instruments.[8] Therefore, the finding that a specific provision of the Agreement is consistent with the principle of the equality of religious communities and the principle of free pursuit of their activities enshrined in the second paragraph of Article 7 of the Constitution also involves a finding of consistency with Article 41 of the Constitution, which was not specifically stated by the Constitutional Court in the operative provisions.

11. The Government proposed that the preamble be reviewed as it does not include confirmation or a statement that the existing legal position of the Catholic Church in the Republic of Slovenia is being confirmed by the Agreement. With regard to the content of a preamble, there are no rules in international practice that would require preambles to include anything more than the determination of the contracting parties and their representatives and a declaration of the agreement that follows from the wording of the treaty. Aust[9] states that, from a legal perspective, it is sufficient for the preamble to state that the parties agreed on the content arising from the wording of the treaty; however, where parties want to express more in the preamble of a treaty, the purpose of such preamble is to present the principal content of the treaty by also including the so-called background of the treaty, and to define its purpose. Andrassy[10] states that a treaty usually includes a preamble wherein the contracting parties, their representatives, and other circumstances relevant for the conclusion of the treaty are indicated. Its content and the answer to the question of whether the statements contained therein are binding on the contracting parties depend entirely on the parties' decision. They are not bound by any rule stipulating that all the essential aspects of a concluded treaty must be outlined in its preamble. It therefore follows from the legal nature of the preamble that it is not possible to challenge what has not been included therein, unless the elements that were omitted are obligatory constituent parts of the preamble of every treaty. The Agreement, however, does include such elements. The fact that the contracting parties did not include a specific statement or circumstance in the Agreement's preamble cannot entail an independent argument for the unconstitutionality of the preamble itself. For the mentioned reasons, it is not possible to conduct the proposed review of the preamble to the Agreement.

12. The fact that the content of the preamble is an important part of the treaty is demonstrated when it is being interpreted. This follows from the first paragraph of Article 31 of the VCLT, which as a general interpretation rule determines that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty and in the light of its object or purpose; the second paragraph of the same article clarifies that the context for the purpose of the interpretation of a treaty shall include its preamble as well as its text (and annexes). In accordance with the cited rule, when interpreting specific provisions of the Agreement the Constitutional Court has taken into account not only the Constitution but also the acts stated in the Agreement's preamble, i.e. canon law, the documents of the Second Vatican Council, particularly the Declaration on Religious Freedom (*Dignitas humanae*) and the Pastoral Constitution on the Church in the Modern World

(*Gaudium in Spes* – hereinafter referred to as the Pastoral Constitution), both dated 7 December 1965,[11] and the internationally recognised principles with regard to ensuring freedom of religion, especially the principles of the ECHR and the Covenant [on Political and Civil Rights]. In this context, it has also taken into account the documents of the Mixed Umbrella Commission.

## B – II

### *Review of Article 1 of the Agreement*

13. Article 1 of the Agreement reads as follows:

“The Republic of Slovenia and the Holy See confirm the principle that the state and the Catholic Church are both independent and autonomous in their organisation, and undertake not only to fully comply with this principle in their mutual relations but also to cooperate in the advancement of the human person and the common good.

In the Republic of Slovenia, the Catholic Church performs its activities freely under canon law, in accordance with the legal order of the Republic of Slovenia.”

14. The Government proposed that the quoted provision be reviewed as it was concerned that the principle according to which the state and the Catholic Church are, each within its own organisation, independent and autonomous (hereinafter referred to as the “principle of independence and autonomy”) may be construed to mean that the Republic of Slovenia recognises the independence of the Catholic Church from the legal order of the Republic of Slovenia. Such is allegedly inconsistent with the Constitution, particularly with the principle of the separation of the state and religious communities (the first paragraph of Article 7 of the Constitution) and with the principle of sovereignty (the second paragraph of Article 3 of the Constitution).

15. The question of how to interpret the wording of Article 1 of the Agreement is vital for the review. As the wording of this provision does not provide a clear answer thereto, the Constitutional Court had to determine its meaning through interpretation. In this respect it had to base its review on the sources that are cited in its preamble as the basis of the Agreement. In establishing the meaning and possible interpretation of the wording, the Court, in addition to the Constitution, therefore also had to take into account the law of the Catholic Church (canon law and the documents of the Second Vatican Council), which is the foundation of the “principle of independence and sovereignty”. In accordance with Article 31 of the VCLT, the Constitutional Court has taken into account the preamble's provision from which it follows that, when concluding the Agreement, each contracting party took its own law into account.[12]

16. It follows from the documents of the Mixed Umbrella Commission that the Government adopted the following two premises when concluding the Agreement: (1) the previous negative comprehension of the separation of the state and religious communities has been surpassed by the new democratic system; and (2) it is necessary to opt for a positive comprehension of this principle within the meaning of the equality of all religious communities and the free pursuit of their activities. The documents emphasise that the meaning of the separation of the state and religious communities lies in “the state neither being affiliated with any religious community nor

privileging or discriminating against any of them, and that religious communities are independent and autonomous in their respective areas.”

17. The legal position of religious communities, which includes the Catholic Church, in the Republic of Slovenia is primarily founded on three constitutional principles: the principle of the separation of the state and religious communities (the first paragraph of Article 7 of the Constitution), the principle of the equality of religious communities and the principle of the free pursuit of their activities (the second paragraph of Article 7 of the Constitution).[13] The Constitution has determined the relation between the state and religious communities merely in principle, while the significance and content of the mentioned principles are still being established.[14]

18. The principle of the separation of the state and religious communities is generally established as a fundamental modern principle in most modern constitutions and legislation. The essential components of this principle are: (1) that the state is not bound by any religion; (2) that there is no state religion or state church; and (3) that religious communities have autonomy over their affairs. The position of the constitution framers regarding the establishment of this principle is demonstrated in the preparatory materials for the Constitution. The substantiation of the first written record on the principle of separation is provided in the explanatory memorandum for the Draft Constitution, dated 29 October 1990.[15] The principle was intended to emphasise “that the Church may not perform functions that are reserved for the state or state authorities (e.g. such as marriages, the keeping of registers, issuance of public documents). Such, however, does not limit Church activities in certain areas, such as charity activities, education, etc., which may be carried out by the Church under the same conditions as by citizens. Such also does not prevent Church institutions from becoming part of various public institutions, e.g. theological faculties joining existing universities, provided that the legislation in the relevant areas is respected.”[16] The explanatory memorandum for the Proposal of the Constitution, dated 12 December 1991, which contained the proposed wording of Article 7 that does not differ from its present wording, stated that this provision “introduces the principle of a secular state. Due to the point of view according to which church(es) and various other religious communities should be treated equally, the first paragraph is formulated in a more general sense, while in addition to equality of religious communities the second paragraph guarantees free pursuit of their activities.”[17]

19. The Constitutional Court already considered the content of this principle in Decision No. U-I-68/98, dated 22 November 2001 (Official Gazette RS, No. 101/01, and OdlUS X, 192). It held that, on the basis of the general principle of the separation of the state and religious communities, the state is obliged to be neutral, tolerant and to perform its activities in a non-missionary manner. In the cited decision, particular emphasis was devoted to state neutrality towards all religions, which it may not identify with, as an essential component of this principle. The Constitutional Court also adopted the position that the state is under no obligation to support or further the activities of religious communities. However, the principle of the separation of the state and religious communities does not imply that all forms of support and assistance are excluded, provided, of course, that the equality of all religious communities is guaranteed. The Constitutional Court also explained the content of this principle in a similar manner in Decision No. U-I-92/01, dated 28 February 2002 (Official Gazette RS, No. 22/02, and OdlUS XI, 25).

20. The principle of the separation of the state and religious communities entails that the state is not bound by any religion, that it may not grant any religion the status of a state religion, and that it does not have its own world view. This therefore entails that, with regard to the regulation of affairs that fall under its jurisdiction, the state may not identify with any religion or be bound by the positions of any religion. The state may, however, develop common civil values, particularly those which enable people with different (religious) values to live together [in peace]. These values are laid down by international instruments as fundamental values and human rights. State neutrality in respect to all religions and other beliefs (including those held by atheists) also entails that the state neither encourages nor prohibits any ideologies, and that it guarantees individuals the right to freely pursue individual and group activities in this area.[18] It must therefore also base the statutory regulation of issues that fall under its jurisdiction on these foundations. One of the essential elements of the principle of the separation of the state and religious communities in countries where this is consistently applied (e.g. France, the United States of America, and Japan) is also that the state provides no financial or other support to religious activities.[19]

21. It follows from the above that the principle of the separation of the state and religious communities (the first paragraph of Article 7 of the Constitution), as part of the democratic system (Article 1 of the Constitution) that protects human rights and fundamental freedoms (the first paragraph of Article 5 of the Constitution), guarantees religious communities the complete freedom to pursue their activities in their religious (spiritual) area. At the same time, it prevents the state from expanding its powers into areas that are exclusively religious by nature or concern the internal affairs of religious communities (the second paragraph of Article 7 of the Constitution). Regarding those areas in which the activities of religious communities interfere with state powers, the freedom of religious communities to pursue their activities, as a constituent part of the principle of the separation of the state and religious communities, is limited by state sovereignty.

22. The Republic of Slovenia became an independent and sovereign state upon the entry into force and implementation of the Basic Constitutional Charter. The constitution framers defined this as a value, to which they refer in the preamble of the Constitution. They also expressly stated in the first paragraph of Article 3 of the Constitution that Slovenia is a state of all its citizens and is founded on the permanent and inalienable right of the Slovene nation to self-determination. State sovereignty is a feature of state authority, on the basis of which it is the highest authority in the state territory (the so-called supremacy of state authority), which is externally independent from other authorities of the same kind and to which all other authorities are internally subordinated.[20] State sovereignty is divided into external sovereignty, which means the independence of state power or the state in respect to other subjects of the same kind, and internal sovereignty which reflects the fact that in its territory the state is the supreme, independent, original, uniform, and overall organisation to which everything on its territory is subordinated by the power of the state.[21] Neither the first nor the second aspect of state sovereignty are absolute: the external aspect due to the existence of public international law,[22] and the internal aspect due also to the fact that internal authority cannot be all-encompassing.[23] The limits of internal state sovereignty are determined by the constitutional regulation of the position of state authorities and their powers, which

serves as a legitimate and legal basis for them to interfere with citizens and autonomous social subjects.[24]

23. The principle of state sovereignty therefore entails that “state authorities exercise their sovereign authority and perform all their authoritative functions throughout the entire state territory within the framework of a uniform constitutional, economic, fiscal, customs, and security defence system.”[25] Unless the Constitution is amended, the performance of specific authoritative functions may not be renounced by treaties.[26] The state’s legitimacy to exercise its authority derives from the principle of the sovereignty of the people, which is enshrined in the first sentence of the second paragraph of Article 3 of the Constitution: “In Slovenia, power is vested in the people.” This entails that “political power cannot not exist as such but needs legally valid, legitimate grounds for its existence and operation, and this legitimacy may not be founded on any other authority (e.g. God, an ideology, historical goals, class interests) than the people themselves; the people are the only holders of power, which they exercise directly or indirectly.”[27] The principle of the sovereignty of the people entails that the people are the only holder of state authority and that “in the state, there cannot be several sovereign state entities.”[28]

24. The principle of state sovereignty prevents the Republic of Slovenia from transferring its sovereign powers determined in the Constitution to another state, institution, or religious community. An exception regarding such transfer of the exercise of part of its sovereign rights is only permitted by Article 3a of the Constitution (Constitutional Act amending Chapter I and Articles 47 and 68 of the Constitution of the Republic of Slovenia, Official Gazette RS, No. 24/03), which refers to Slovenia's integration into international organisations and defence alliances.

25. In light of the above, it would be inconsistent with Article 3 of the Constitution if the Republic of Slovenia renounced part of its sovereignty and transferred its powers to another institution with regard to matters which, in accordance with the Constitution, fall under national jurisdiction. The principle of the separation of the state and religious communities does not prevent religious communities from performing activities in different areas of social life (e.g. education, charity, social, health, and economic activities). However, due to the principle of sovereignty (i.e. internal state sovereignty), only the state may set the limits within which and the conditions under which the carrying out of tasks pertaining to the competence of the state may be entrusted to the private sphere. The principle of sovereignty concurrently determines the limits of the independence of a religious community, which is guaranteed by the first paragraph of Article 7 of the Constitution. The role the religious communities play and the position they hold in areas in which their powers and state powers converge depend on the organisation of the state, which must ensure the basic equality of all citizens, regardless of whether they are believers or not (the first paragraph of Article 14 and the second paragraph of Article 41 of the Constitution). Therefore, a review of Article 1 of the Agreement in terms of its consistency with the principle of sovereignty enshrined in Article 3 of the Constitution is also crucial for a review of its consistency with the first paragraph of Article 7 of the Constitution.

26. The content of the “principle of independence and autonomy”,[29] which the Catholic Church adopted at the Second Vatican Council in the Pastoral Constitution, is relevant for understanding the meaning of the first and second paragraphs of Article 1 of the Agreement. In the Pastoral Constitution, the Second Vatican Council

defined “how it conceives of the presence and activity of the Church in the world of today”.<sup>[30]</sup> Chapter IV, particularly Article 76 of the Pastoral Constitution, in which the relation between the political community and the Church is defined, is important for determining the meaning of this principle. The third paragraph of Article 76 begins with the following wording: “The Church and the political community in their own fields are autonomous and independent from each other. Yet both, under different titles, are devoted to the personal and social vocations of the same men. The more that both foster sounder cooperation between themselves with due consideration for the circumstances of time and place, the more effective will their service be exercised for the good of all.”<sup>[31]</sup>

27. As a supranational religious organisation (as the Universal Church), the Catholic Church operates in states with different constitutional systems. On the basis of the provisions of the Pastoral Constitution, the Catholic Church considers the “principle of independence and autonomy” to be universal and the same in every government system irrespective of whether it operates in states where the Catholic Church has a special role or where the principle of the separation of the state and religious communities is not expressly determined (e.g. Germany, Austria, Italy, Spain, and Portugal), or in states where the principle of the separation of the Church and the state has been adopted, although not necessarily literally or in the same (milder or more consistent) form (e.g. France, the USA, Belgium, and the Netherlands). This universality is emphasised in the first paragraph of Article 76 of the Pastoral Constitution, which reads as follows: “It is very important, especially where a pluralistic society (*societas pluralistica*) prevails, that there be a correct notion of the relationship between the political community and the Church.” It is characteristic for the Pastoral Constitution that the powers of the Church as well as the powers of the political community are determined therein: “It is only right, however, that at all times and in all places, the Church should have true freedom to preach the faith, to teach her social doctrine, to exercise her role freely among men, and also to pass moral judgement in those matters which regard public order when the fundamental rights of a person or the salvation of souls require it. In this, she should make use of all the means – but only those – which accord with the Gospel and which correspond to the general good according to the diversity of times and circumstances” (the last sentence of the fifth paragraph of Article 76); and political authority must always be “exercised within the limits of the moral order and directed toward the common good” (the fourth paragraph of Article 74 of the Pastoral Constitution).

28. Church law draws a distinction between the Church as a legal institution and the Church as an institution of Divine Law. “This duality is also reflected in the Church’s legal dimension, as canon law is composed of human law established by the church authority (the Roman Pope, ecumenical councils, bishops, etc.) and of Divine Law, which we understand to be a set of guiding premises that are explicitly or implicitly determined by God himself and to which the specific solutions of canon law must strictly abide.”<sup>[32]</sup> In conformity with the Church teaching, divine natural law is eternal and unalterable. “Regarding the hierarchy of legal sources, Divine law is in every respect above human law insofar as it comes from God. It is therefore not possible for anyone to either partially or entirely annul the provisions of Divine law or polemicize against them.”<sup>[33]</sup> According to canon law, the “principle of independence and autonomy” could be construed to mean that the Catholic Church is independent and autonomous from state regulation in all matters which are considered to be of a

religious (spiritual) nature and fall under Divine law, including so-called mixed matters.

29. Modern states that recognise and protect human rights do not regulate the religious life of their citizens.[34] The state must allow religious communities to freely pursue their activities (the second paragraph of Article 7 of the Constitution) when the exercise of the constitutional right to freedom of conscience is involved. The state must therefore guarantee individual and collective religious freedom to all citizens. Furthermore, Article 41 of the Constitution guarantees that religious freedom and other beliefs are fully respected in private and public life. On the other hand, the Catholic Church does not demand a dominant position with regard to the state. In secular matters, it respects national law and either observes it or attempts to reach a different agreement.[35] This is also shown in specific provisions of the Agreement in which it is explicitly stated and clearly defined that the Catholic Church will act in “accordance with the legal order of the Republic of Slovenia” regarding the registration of church institutions as legal entities (the second paragraph of Article 2), the notification of public liturgy (the second paragraph of Article 3), the establishment of associations (Article 8), property relations (Article 9), and the establishment of private schools (Article 10). A different understanding of the relation between the state and the Catholic Church could only arise in areas which are considered by the Church to be religious matters from a religious perspective, but which the state deems to be secular matters, i.e. so-called mixed matters, such as public schools and marriage. The key issue is whether the first paragraph of Article 1 of the Agreement recognises the complete freedom of the Church to pursue activities in these so-called mixed areas.

30. The answer to this question must be sought in connection with the second paragraph of Article 1 of the Agreement, which provides that “in the Republic of Slovenia, the Catholic Church performs its activities freely under canon law, in accordance with the legal order of the Republic of Slovenia.” The provisions of the first and second paragraphs of Article 1 of the Agreement are linked in terms of content and so they must be interpreted on the basis of the same premises.[36] However, the grammatical interpretation of the second paragraph of Article 1 also does not give a clear answer to the question of what the relation between canon law and the law of the Republic of Slovenia in these so-called mixed areas is. The comma in the second paragraph of Article 1 of the Agreement indicates that the wording does not mean “and in accordance with the legal order of the Republic of Slovenia.”[37] The wording of this provision could thus be construed to mean that the Church is obliged to act in conformity with the legal order of the Republic of Slovenia only in those areas which it considers to be secular matters.

31. Such an interpretation of the wording of the second paragraph of Article 1 of the Agreement would entail that the state recognises the right of the Catholic Church to unilaterally interfere in areas which otherwise fall under the jurisdiction of the state. As a result, the Republic of Slovenia would renounce part of its (state) sovereignty, without there being a basis for this in the Constitution, which would therefore be contrary to Article 3 of the Constitution. Such an understanding would also be inconsistent with the second paragraph of Article 7 of the Constitution, according to which the state must treat religious communities equally. If it renounces a part of its sovereignty to the benefit of one religious community, it would thereby grant that

religious community a privileged position in comparison with other religious communities.

32. The wording of the second paragraph of Article 1 of the Agreement can also be interpreted as allowing the Catholic Church to perform activities in accordance with canon law in so-called mixed areas as long as such activities do not conflict with the legal order of the Republic of Slovenia. Such an interpretation is closer to the Italian original version of the Agreement, in which the wording "*e nel rispetto dell'ordine giuridico della Repubblica di Slovenia*", if translated literally, reads "and in accordance with the legal order of the Republic of Slovenia".[38] The Catholic Church also sees its independence and autonomy, and thus its relation to the state, as a dynamic process that takes into account the diversity of national systems, and it is prepared to adapt to the existing legal order of the state in which it operates. Note 1 of the Pastoral Constitution specifically emphasises that "the constitution must be interpreted according to the general norms of theological interpretation. Interpreters must bear in mind – especially in part two – the changeable circumstances which the subject matter, by its very nature, involves." [39] The chapter that covers the life of a political community[40] and that, in Article 76, determines the "principle of independence and autonomy" also forms part of these matters, which are covered in part two of the Pastoral Constitution. Furthermore, the observance of the state legal order is also emphasised in the Declaration on Religious Freedom, with Article 4 thereof providing that all religious communities must have the right to liberty, "provided the just demands of public order are observed". The protection of religious freedom also falls within the power of public authority, which must ensure such protection "through juridical norms which are in conformity with the objective moral order" (Article 7).

33. If we interpret the provisions of both paragraphs of Article 1 on the basis of the premises outlined in the previous paragraph, this article can only be understood in the sense that, in performing its activities in so-called mixed areas, the Catholic Church will respect the legal order of the Republic of Slovenia. In doing so it has the right to strive, within this legal order and through constitutionally permitted means (also including endeavours to amend the provisions of the Constitution), to pursue its aims and to attempt to cooperate with the state in mixed areas.

34. If the "principle of independence and autonomy" is interpreted in such a manner, and if the wording of Article 1 of the Agreement is understood in conformity with this interpretation, then this provision of the Agreement is not inconsistent with Article 3 of the Constitution. The "principle of independence and autonomy", when understood in such a manner, is also not inconsistent with Article 7 of the Constitution.

35. As the Constitutional Court found that the wording of Article 1 of the Agreement could be interpreted in two ways, one of which is inconsistent with the Constitution, it adopted a so-called interpretative opinion. The Constitutional Court had already proceeded in this manner in the preliminary review of a treaty in Opinion No. Rm-1/97.[41] As a result, it prevented that, in the event of the ratification of the Agreement, contents which were inconsistent with the Constitution would be adopted into the legal order upon the Agreement's entry into force. There is no constitutional impediment, however, for a treaty provision to be adopted in the internal legal order insofar as it is interpreted in a constitutionally consistent manner, as it follows from this Opinion.

36. Furthermore, Article 1 of the Agreement is crucial for the understanding and meaning of the other provisions of the Agreement which were reviewed by the Constitutional Court (the second paragraph of Article 2, the first paragraph of Article 3, the first paragraph of Article 10, and, in particular, the second paragraph of Article 14). The Constitutional Court therefore based its review of these provisions on the premises defined in this part of the reasoning of the Opinion (Point II of the operative provisions of this Opinion).

### B – III

#### *Review of the second paragraph of Article 2 of the Agreement*

37. Article 2 reads as follows:

“The Republic of Slovenia recognises the legal personality of the Catholic Church. The Republic of Slovenia also recognises the legal personality of all territorial and personal Church institutions based in the Republic of Slovenia, which are granted such personality pursuant to the legal norms of canon law. According to the legal system of the Republic of Slovenia, the Church authority must report such institutions to the state authority for registration.”

38. Article 2 of the Agreement allegedly also features among the constitutionally disputable articles; however, the Government expressed its doubts only in relation to its second paragraph. Therefore, the Constitutional Court proceeded to review only this provision. The provision of the second paragraph of Article 2 is allegedly constitutionally disputable as it does not determine that the Catholic Church and its organisations are recognised legal personalities under private law. By adopting the Agreement, the Republic of Slovenia allegedly violated the principle of the equality of religious communities enshrined in the second paragraph of Article 7 of the Constitution, as the Agreement does not explicitly provide that the territorial and personal institutions of the Catholic Church in the Republic of Slovenia are legal entities under private law, as is provided for the Evangelical Church in the Agreement on the Legal Position of the Evangelical Church in the Republic of Slovenia.[42] As canon law also recognises public and private legal entities, there is a concern that the Catholic Church may assert that those legal entities that have the status of public legal entities under canon law[43] also acquire the status of entities under public law in accordance with the legislation of the Republic of Slovenia. There is also a concern that the provision is not sufficiently clear and precise, thereby constituting a violation of the principles of a state governed by the rule of law (Article 2 of the Constitution).

39. As in the majority of legal orders, in the legal order of the Republic of Slovenia the so-called *numerus clausus* principle also applies to legal entities, limiting the choice of possible types of legal entity and prohibiting combinations of different types of legal entities.[44] The existing legislation of the Republic of Slovenia (the first paragraph of Article 7 of the LSRCA) determines that religious communities are legal entities under civil law. They are *sui generis* civil-law legal entities.

40. Pursuant to canon law, juridic persons are either aggregates of persons or aggregates of things (Can. 115, first paragraph). Can. 114 determines that “[j]uridic persons are constituted either by the prescript of law or by special grant of the competent authority given through a decree. They are aggregates of persons [...] or of things [...] ordered for a purpose which is in keeping with the mission of the

Church and which transcends the purposes of individuals". The "territorial and personal Church institutions" referred to in the Agreement can therefore be groups of persons or groups of things that enjoy the status of a legal entity pursuant to canon law. It is evident from the second paragraph of Article 2 of the Agreement that the state recognises their existence and does not require them to meet the requirements determined for civil-law legal entities by the law of the Republic of Slovenia in order to recognise their legal personality. For the recognition of their status under civil law, it is sufficient for the Church authority to report them to the competent state authority for registration pursuant to the legal order of the Republic of Slovenia.[45] In its Decision No. U-I-25/92, dated 4 March 1993 (Official Gazette RS, No. 13/93, and OdlUS II, 23), the Constitutional Court emphasised that, in relation to legal personality, Church organisations and institutions must abide by state regulations. The Agreement therefore provides no basis for the recognition of public-law status to territorial or personal Church institutions.

41. For the reasons mentioned above, the second paragraph of Article 2 of the Agreement is not inconsistent with the principle of the equality of religious communities enshrined in the second paragraph of Article 7 or with the principles of a state governed by the rule of law enshrined in Article 2 of the Constitution.

## **B – IV**

### *Review of the First Paragraph of Article 3 of the Agreement*

42. Article 3 of the Agreement reads as follows:

"The legal order of the Republic of Slovenia guarantees the Catholic Church the freedom to perform its activities, liturgy, and catechesis.

All extraordinary public liturgy and other public religious gatherings (pilgrimages, processions, meetings) are to be notified by the competent authority of the Catholic Church to the competent state authority in accordance with the legal order of the Republic of Slovenia."

43. Article 3 of the Agreement allegedly also features among the constitutionally disputable articles. However, the Government expressed its doubts only in relation to its first paragraph. Therefore, the Constitutional Court proceeded to review only this provision.

The second paragraph of Article 7 of the Constitution provides that religious communities have the right to pursue their activities freely. The Constitution itself thus guarantees to the Catholic Church the freedom to pursue activities in all religious matters, including the liturgy and catechesis. The first paragraph of Article 3 of the Agreement therefore only confirms the principle of the free pursuit of activities of religious communities determined in the second paragraph of Article 1 of the Agreement. By this provision the contracting parties sought to specifically emphasise the most important parts of the religious activities of the Catholic Church, i.e. the liturgy[46] and catechesis.[47]

44. The freedom to pursue activities in this area is a reflection of the "principle of independence and autonomy", as it is apparent from the reasoning of this Opinion in relation to the review of Article 1 of the Agreement. The Constitutional Court reiterates that, in order to understand the first paragraph of Article 3 of the Agreement, it is necessary to take into account the constitutionally consistent

interpretation of Article 1 thereof. Therefore, the first paragraph of Article 3 of the Agreement cannot be understood in the sense that it could constitute a basis for the liturgy and catechesis to be included in the public activities of the state, e.g. as an element of public education (Constitutional Court Decision No. U-I-68/98). This provision refers only to the regulation of the operation of the Catholic Church in the areas in which it is free to act in accordance with the principle of the separation of the state and religious communities. This is also confirmed by the wording of the second paragraph of Article 3, which is an exception to its first paragraph. The wording of the first paragraph of Article 3 of the Agreement would undoubtedly be clearer if it were explicitly emphasised that the freedom to pursue activities refers “especially” or “particularly” to liturgy and catechesis. However, despite the aforementioned, this article can only be interpreted as referring exclusively to the religious activities of the Catholic Church in the Republic of Slovenia. Therefore, the concerns that through this provision the Republic of Slovenia recognises the “entire” operation of the Catholic Church to be free and renounces its powers are unfounded.

45. Consequently, the first paragraph of Article 3 of the Agreement is not inconsistent with the principle of the separation of the state and religious communities enshrined in the first paragraph of Article 7, the principle of sovereignty enshrined in Article 3 and the principles of a state governed by the rule of law enshrined in Article 2 of the Constitution.

## **B – V**

### *Review of the First Paragraph of Article 10 of the Agreement*

46. Article 10 of the Agreement reads as follows:

“In accordance with the legislation of the Republic of Slovenia and canon law, the Catholic Church has the right to establish and manage schools of all types and levels, dormitories for secondary school and university students, and other educational institutions.

The state provides support to the institutions referred to in the previous paragraph under the same conditions as it provides support to other similar private institutions.

The status of secondary school and university students and the pupils of these institutions is equal to the status of students and pupils in public institutions.”

47. The first paragraph is alleged to be constitutionally disputable, as it allows the Catholic Church to interfere with the legal regulation of public schools in the Republic of Slovenia.

48. The area of education is an area in which the Church's mission and the jurisdiction of the state meet. The Church strives to ensure that Catholic teaching and education are performed in schools of every kind and level, i.e. also in public (state) schools.[48] The Constitutional Court already decided on this issue in Decision No. U-I-68/98. The Agreement does not cover this issue. Article 10 of the Agreement refers exclusively to the right to establish and manage schools, dormitories for secondary school and university students, and other educational organisations. In Article 10 of the Agreement, the Republic of Slovenia recognises the right of the Catholic Church to establish and manage, in accordance with canon law,[49] “schools of all types and levels, dormitories for secondary school and university students, and other educational institutions,” while the Catholic Church undertakes to

respect the legislation of the Republic of Slovenia.[50] That the first paragraph of Article 10 of the Agreement relates to the establishment and management of private schools clearly follows from its second paragraph, which refers to the first paragraph and in which the Republic of Slovenia undertakes to provide support to private educational establishments founded by the Catholic Church, in the same manner as other similar private establishments and organisations.

49. Considering the above, the first paragraph of Article 10 is not inconsistent with the principle of the separation of the state and religious communities enshrined in the first paragraph of Article 7 of the Constitution.

## **B – VI**

### *Review of the Second Paragraph of Article 14 of the Agreement*

50. Article 14 reads as follows:

“The Republic of Slovenia and the Holy See shall resolve any disagreement that might arise due to the interpretation or application of the provisions of this Agreement amicably and through diplomatic channels.

The Republic of Slovenia and the Holy See shall endeavour to continue discussing outstanding issues that are not the subject of this Agreement, with the intention of resolving them by mutual agreement.”

51. The second paragraph is alleged to be constitutionally disputable, as it imposes on the Republic of Slovenia the obligation to bilaterally resolve all outstanding issues which are not covered by this Agreement, and the Republic of Slovenia allows the Holy See to participate in the decision-making process on issues that fall under its sovereign and exclusive jurisdiction.

52. By this provision the state undertakes to further attempt to settle any possible outstanding issue with the Holy See by mutual agreement. However, this provision can only be understood in the sense that the state is also restricted by the constitutional order when trying to reach further agreements. Thereby, it assumes the duty to negotiate so that, on the basis of the diplomatic negotiations conducted, it will endeavour to find amicable and mutually acceptable solutions for any outstanding issue that is not covered either sufficiently or at all by the Agreement. The second paragraph of Article 14, however, does not imply that, by assuming such obligation, the Republic of Slovenia also assumed the obligation in advance to reach an agreement in subsequent negotiations regarding a mutually acceptable solution, i.e. that it assumed the duty to reach an agreement. Therefore, such provision cannot in itself be inconsistent with the principle of the separation of the state and religious communities enshrined in the first paragraph of Article 7 of the Constitution. This principle does not exclude the conclusion of agreements with specific religious communities. If the outcome of such an agreement remains within the constitutional limits defined by the Constitutional Court in this Opinion with regard to Article 1 of the Agreement, it will not be inconsistent with the first paragraph of Article 7 of the Constitution.

## **B – VII**

53. In this review, the Constitutional Court issued the opinion that the challenged provisions of the Agreement are not inconsistent with the Constitution and adopted an interpretative decision regarding Article 1 of the Agreement, which is vital for the review of the other provisions of the Agreement. The decisions of the Constitutional Court are binding (the third paragraph of Article 1 of the CCA). An opinion issued in a case concerning the review of the constitutionality of a treaty that is in the process of ratification has the same legal effects. As the Constitutional Court has already emphasised in its Opinion No. Rm-1/97, such opinion has an internal legal effect – it is binding on the state authorities of the Republic of Slovenia; however, in the area of international law, such a decision has no effect. In the implementation of the Agreement (either when concluding further agreements with the Holy See or adopting legislation), provided it is ratified and enters into force, the state authorities of the Republic of Slovenia will be required to take into account the content of the reviewed provisions of the Agreement as determined by the interpretation of the Constitutional Court. Such will also need to be taken into account by the National Assembly when ratifying the Agreement. As the Constitutional Court emphasised already in its Opinion No. Rm-1/00, dated 19 April 2001 (Official Gazette RS, No. 43/01, and OdlUS X, 78), any disagreement arising between the contracting parties during the implementation of the Agreement due to a different understanding of its content (particularly Article 1) by the other contracting party cannot be the subject of constitutional review, but is instead a matter for political debate in the National Assembly upon its ratification.

### C

54. The Constitutional Court issued this Opinion on the basis of Article 70 of the CCA and the second indent of the third paragraph of Article 46 of the Rules of Procedure of the Constitutional Court (Official Gazette, Nos. 93/03 and 98/03 – corr.), composed of: Dr Dragica Wedam-Lukić, President, and Judges Dr Janez Čebulj, Dr Zvonko Fišer, Lojze Janko, Mag. Marija Krisper Kramberger, Milojka Modrijan, Dr Ciril Ribičič, Dr Mirjam Šrk, and Jože Tratnik. The Opinion was adopted unanimously.

The President  
Dr Dragica Wedam-Lukić

#### Notes:

[\*] Translator's note: Regularly, *pravna oseba* is translated as legal entity; however, canon law uses the term juridic person. Therefore whenever there are references to canon law the term juridic person is used.

[1] On 25 January 1983, Pope John Paul II proclaimed the new (amended) Code of Canon Law. Its translation into Slovene, dated 27 November 1983, was published by the Archiepiscopal Ordinary's Office in Ljubljana, Ljubljana 1983.

[2] Point 7 reads as follows: "Therefore the Mixed Umbrella Commission considers it useful that, given the full consideration of mutual independence and autonomy, the State and the Catholic Church cooperate and enter into agreements respecting the Constitution, international documents on human rights, and the laws of the Republic of Slovenia in matters where their activities meet. The Mixed Umbrella Commission will endeavour to regulate the legal position of the Roman Catholic Church in the

form of an agreement between the Church and the State. The final aim of that endeavour is the overall guarantee and respect for the right to religious belief and a rich spiritual life of the citizens.”

[3] The CCL determines that the “the term Apostolic See or Holy See refers not only to the Roman Pontiff but also to the Secretariat of State, the Council for the Public Affairs of the Church, and other institutes of the Roman Curia, unless it is otherwise apparent from the nature of the matter or the context of the words” (Can. 361).

The Holy See with the Pontiff at the head is not only the highest authority of the Universal Catholic Church, but also of the State of the Vatican City.

[4] Concordats, Encyclopedia of public international law, Volume one, 1992, p. 729.

[5] On 30 September 1969, the Holy See signed the Vienna Convention and, on 25 February 1977, ratified multilateral treaties deposited with the Secretary-General, Status as at 31 December 2000, Volume II, United Nations, Chapter XXIII, p. 263.

[6] Religious and other beliefs may be freely professed in private and public life (the first paragraph of Article 41 of the Constitution).

[7] No one shall be obliged to declare their religious or other beliefs (the second paragraph of Article 41 of the Constitution).

[8] Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette RS, No. 33/94, MP, No. 7/94 – hereinafter referred to as the ECHR), Article 18 of the International Covenant on Civil and Political Rights (Official Gazette SFRY, MP, No. 7/71, and Official Gazette SFRY, MP, No. 9/92 – hereinafter referred to as the Covenant), Article 18 of the Universal Declaration of Human Rights.

[9] Aust, *Modern Treaty Law and Practice*, Cambridge University Press, 2002, pp. 335–338.

[10] Andrassy, *Međunarodno pravo* [International Law], Školska knjiga, Zagreb, 1976, p. 328.

[11] *Koncilski odloki* [Council Decrees], Družina, Ljubljana 1995.

[12] The second indent of the preamble reads as follows: “whereas the Republic of Slovenia takes into account its Constitution, particularly Articles 7 and 41 thereof, and the Holy See takes into account the documents of the Second Vatican Council and the norms of canon law.”

[13] The legal position of religious communities in Slovenia is still regulated in more detail by the Legal Status of Religious Communities in the Socialist Republic of Slovenia Act, the principal text of which was adopted in the previous socialist order in 1976 (Official Gazette SRS, Nos. 15/76 and 42/86, and Official Gazette RS, No. 22/91 – hereinafter referred to as the LSRCA). The amendments to this Act that were adopted in 1991, just before the adoption of the independence legislation (the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, Official Gazette RS, No. 1/91-I, and the Constitutional Act for the Implementation of the Basic Constitutional Charter on Independence and Sovereignty of the Republic of Slovenia, Official Gazette RS, No. 1/91-I), were a crucial step forward in the understanding of the principle of the separation of the state and religious communities defined in the previous socialist order, in which the state had limited the activities of religious communities exclusively to the private sphere. See Kerševan, *Sporazumi s Svetim sedežem in družbeni položaj Rimskokatoliške cerkve (RKC) v Sloveniji* [Agreements with the Holy See and the Social Position of the Roman Catholic Church in Slovenia], Čarnijev zbornik (1931–1996), Ljubljana

1998, p. 83. The abovementioned amendments to the LSRCA eliminated the obstacles preventing religious communities from becoming more involved in society. Therefore, the provisions which had explicitly prohibited religious communities from playing an active role in the area of education and from performing any activity of "general or special social importance" ceased to have effect. The legal and actual position of religious communities in the Republic of Slovenia (e.g. the payment of the employer's contributions for old-age, disability and health insurance to priests and monks of all religious communities, benefits in the form of tax and customs exemptions, the Faculty of Theology joining the state university, the partial financing of private schools, the recognition of the pupils' end of year reports, access to hospitals, nursing homes, prisons, and the army) demonstrates that religious communities in the Republic of Slovenia are guaranteed internal autonomy and can freely pursue activities in various areas.

[14] Šturm emphasised the importance of the Mixed Umbrella Commission documents for interpreting the constitutional provision on the separation of the state and religious communities in: Lovro Šturm (ed.), *Komentar Ustave Republike Slovenije* [The Commentary on the Constitution of the Republic of Slovenia], Fakulteta za podiplomske državne in evropske študije, 2002, p. 124.

[15] The first paragraph of Article 5 read as follows: "The Church is separate from the state."

[16] *Nastajanje slovenske ustave, Izbor gradiv Komisije za ustavna vprašanja* [The Creation of the Slovene Constitution, Selected Documents of the Commission for Constitutional Issues], Vol. III, Cerar, Perenič (eds.), Državni zbor, Ljubljana 2001, p. 1242.

[17] *Ibid.*, p. 2360.

[18] Kerševan, Sporazumi s Svetim sedežem in družbeni položaj Rimskokatoliške cerkve (RKC) v Republiki Sloveniji, *op. cit.*, p. 86.

[19] *Ibid.*, p. 85.

[20] *Pravo, leksikon Cankarjeve založbe* [Law, a lexicon of Cankarjeva založba], second expanded and altered edition, Pavčnik (ed.), p. 74. See also Pitamic, *Država* [The State], Cankarjeva založba, Ljubljana 1996, pp. 27-44.

[21] Kaučič in: Grad and others, *Državna ureditev Slovenije* [The Organisation of the State of Slovenia], second amended and supplemented edition, Ljubljana 1996, p. 19.

[22] This was also emphasised by Pitamic, *ibid.*

[23] *Pravo, leksikon, op. cit.*, p. 74.

[24] Grad in: Grad and others., *Državna ureditev Slovenije, op. cit.*, p. 82.

[25] Jerovšek in: *Komentar Ustave, op. cit.*, p. 110.

[26] *Ibid.*, p. 111.

[27] Jambrek in: *Komentar Ustave, op. cit.*, p. 46.

[28] Šturm in: *Komentar Ustave, op. cit.*, p. 104.

[29] The mentioned principle is included in the agreements reached between the Holy See and Italy, Poland, Croatia, Latvia, and Lithuania. This principle was also included in the agreement between the Holy See and the Czech Republic; however, the Czech parliament did not ratify the agreement. The agreement between the Holy See and Estonia does not include this principle.

[30] *Koncilski odloki, op. cit.*, the first paragraph of Article 2, p. 570.

[31] *Ibid.*, p. 650.

[32] Košir, *Uvod v kanonsko pravo* [An Introduction to Canon Law], Ljubljana 1997, p. 28.

[33] *Ibid.*, p. 29.

[34] Kerševan, *Cerkev, Politika, Slovenci po letu 1990* [The Church, Politics, Slovenians after 1990], pp. 19–21 and 136.

[35] Can. 1290 provides that: “The general and particular provisions which the civil law in a territory has established for contracts and their disposition are to be observed with the same effects in canon law insofar as the matters are subject to the power of governance of the Church, unless the provisions are contrary to divine law or canon law provides otherwise.”

[36] That the second paragraph of Article 1 of the Agreement must be interpreted in conjunction with the “principle of independence and autonomy” determined in the first paragraph of this article also follows from the fact that otherwise it would be meaningless as the second paragraph of Article 7 of the Constitution and the first paragraph of Article 3 of the Agreement guarantee the Catholic Church the right to freely pursue its activities in the Republic of Slovenia.

[37] Such interpretation is also supported by the fact that the Holy See did not accept the wording contained in one of the drafts, which read as follows: “The Catholic Church pursues its activities freely in the Republic of Slovenia, in accordance with the legal order of the Republic of Slovenia and canon law.”

[38] Article 33 of the VCLT, interpretation of treaties authenticated in two or more languages.

[39] *Koncilski odloki*, *op. cit.*, p. 570.

[40] The second part also includes chapters covering the dignity of marriage and the family, the proper encouragement of cultural progress, economic and social life, and striving for peace and support for the association of nations.

[41] The interpretative decision (*la décision de non-contrariété sous réserve*) was introduced in the constitutional review of treaties by the French *Conseil Constitutionnel*. Instead of finding that a treaty provision is inconsistent with the constitution, it interprets this provision in such a manner as to allow for the conclusion that this provision is not inconsistent with the constitution. Gaïa, *Le Conseil constitutionnel et l'insertion des engagements internationaux dans l'ordre juridique interne*, Economica, Paris 1991, pp. 123–127.

[42] The Agreement on the Legal Position of the Evangelical Church in the Republic of Slovenia, which was signed by the authorised representatives of the Government and the Evangelical Church on 25 January 2000.

[43] The first paragraph of Can. 116 provides that: “Public juridic persons are aggregates of persons or things which are constituted by competent ecclesiastical authority so that, within the purposes set out for them, they fulfil in the name of the Church, according to the norm of the precepts of the law, the proper function entrusted to them in view of the public good; other juridic persons are private”. Public juridic persons are accorded legal personality either by the law itself or by a special decree of the competent authority expressly granting such, while private juridic persons are given legal personality only through a special decree of the competent authority expressly granting such (Can. 116, second paragraph). Particular churches (dioceses, Can. 373) and parishes (Can. 515) are, for example, deemed to be public juridic persons by law.

[44] Trstenjak, *Pravne osebe* [Legal Entities], *Gospodarski vestnik*, 2003, pp. 66–67.

[45] It is evident from the article of Dr Miha Juhart “Premožensjkopravna razmerja Cerkve v Sloveniji med svetovnima vojnama” [The Property Relations of the Church in Slovenia between the World Wars] that there are no doubts about this; in the article, he explains that “in contemporary conditions it would probably not go amiss if a special register were introduced in relation to Church legal entities, which, by being made public, could improve the security of legal transactions. Even if such a special register is introduced, the determination of requirements for legal personality might be left entirely to the provisions of internal canon law, and the register would only make details of the internal Church organisation public. Together with the registration of a legal entity, the register could also provide other data which are important for legal transactions.” Published in: *Država in Cerkev, izbrani zgodovinski in pravni vidiki, Mednarodni posvet 21. in 22. 6. 2001* [The State and the Church, Selected Historical and Legal Aspects, International Symposium held on 21 and 22 June 2001], Slovenska akademija znanosti in umetnosti, Ljubljana 2002, p. 129.

[46] The Constitution on the Sacred Liturgy adopted at the Second Vatican Council provides that the liturgy is the summit toward which the activity of the Church is directed (Article 10) and that the “sacred liturgy does not exhaust the entire activity of the Church” (Article 9), *Koncilski odloki, op. cit.*, pp. 65 and 66.

[47] It follows from the Decree on the Pastoral Office of Bishops in the Church adopted at the Second Vatican Council that catechesis – catechetical instruction – is one of the primary tasks of bishops (Articles 13 and 14). *Ibid.*, p. 265.

[48] Book III of the CCL governs “The Teaching Function of the Church”. The Church has “the duty and innate right, independent of any human power whatsoever, to preach the gospel to all peoples” (Can. 747). Can 761 determines that “various means available are to be used to proclaim Christian doctrine: first of all preaching and catechetical instruction, which always hold the principal place, but also the presentation of doctrine in schools, academies, conferences, and meetings of every type.” First and foremost, it is the duty of parents to ensure their children receive a Catholic education, and they have the right to assistance from civil society in order to ensure this (Can. 793). All Catholic religious instruction and education imparted in any schools whatsoever are subject to the authority of the Church (Can. 804).

[49] Canon law (Can. 800) grants the Catholic Church the right to establish and direct schools of every discipline, type and level. A Catholic school is a school that is directed by a competent ecclesiastical authority or a public ecclesiastical juridic person or which is recognised as such by an ecclesiastical authority by way of a written document (Can. 803). The local bishop has the right to issue prescripts which pertain to the general regulation of Catholic schools (Can. 805–806).

[50] In accordance with Article 57 of the Constitution, the legislation of the Republic of Slovenia governing schooling facilitates and legally regulates the establishment and operation of private schools, which can be established as educational institutions by domestic and foreign natural persons and legal entities, unless otherwise provided for a particular activity or specific type of institution (Articles 1 and 2 of the Institutes Act, Official Gazette RS, No. 12/91, and the Organisation and Financing of Education Act, Official Gazette RS, No. 12/96, etc.).