

ACADEMIC FREEDOM AND ECCLESIASTIC AUTHORITY AT THE UNIVERSITY OF BELGRADE²

Summary: *In this paper, the author argues that the new Law on Amendments to the Law on Higher Education from 2021 is not in harmony with the Constitution of Serbia regarding the provisions implying the consent of church bodies for enrollment of students, employment and loss of appointment pertinent to the Faculty of Orthodox Theology. The paper tackles the relation between the university and the Church in Serbia, which changed dramatically since 2019, when the Church started intervening illegally in the Faculty of Theology, triggering a change of the law governing higher education. With the new law, the Serbian Church, a non-university and non-state institution, has been allowed to fully control the enrollment of students, and the selection and dismissal of the state university teachers, and this fact clearly contradicts the Serbian Constitution.*

Keywords: *Missio canonica, Faculty of Orthodox Theology, university autonomy, secularity of the state, Law on higher education*

AKADEMSKA SLOBODA I CRKVENI AUTORITET NA UNIVERZITETU U BEOGRADU

Rezime: *U ovom radu autor ukazuje na to da novi Zakon o izmenama i dopunama Zakona o visokom obrazovanju iz 2021. nije u saglasnosti s Ustavom Srbije, jer se tu predviđa saglasnost nadležnih crkvenih organa za upis studija, učešće u konkursu, zasnivanje radnog odnosa i gubitak zvanja na Pravoslavnom bogoslovskom fakultetu (PBF) Univerziteta u Beogradu. Ustav je, naime, povređen u onim odredbama kojima se jemče svetovnost države, autonomija univerziteta i sloboda naučnog i umetničkog stvaranja. Rad se, dakle, bavi odnosom univerziteta i Crkve u Srbiji, koji se drastično promenio od 2019. godine, kada je Crkva počela da protivzakonito interveniše na PBF, što je izazvalo promenu zakona kojim se reguliše visoko obrazovanje. Novim zakonom je Srpskoj pravoslavnoj crkvi, neuniverzitetskoj i nedržavnoj instituciji, omogućena puna kontrola nad upisom studenata, izborom i otpuštanjem nastavnika na državnom univerzitetu, što je u jasnoj suprotnosti sa Ustavom Srbije.*

Gljučne reči: *Missio canonica, Pravoslavni bogoslovski fakultet, autonomija univerziteta, svetovnost države, Zakon o visokom obrazovanju.*

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2 This paper is based on my presentation at the international round table *Ecclesiastical Authority and Academic Freedom in Orthodoxy*, Volos Academy for Theological Studies (online), Volos, Greece, on 7 June 2023.

Introduction

The definition of academic freedom that I consider very appropriate for my subsequent discussion is to be found in the *Oxford Dictionary of Public Health*, and it reads as follows: “The right of scholars to study and report on any problem that their curiosity and conscience dictate, without fear of retribution. This right may be infringed when studies are paid for by governments, industries, or faith-based groups that exert their authority to suppress, censor, or alter findings, forbid certain lines of inquiry, or interfere with the dissemination of results” (Dictionary, 2007).

Another suitable definition is to be found in William Van Alstyne’s article from 1975: “‘Academic freedom’ is ... [the] personal liberty to pursue the investigation, research, teaching, and publication of any subject as a matter of professional interest without vocational jeopardy or threat of other sanction, save only upon adequate demonstration of an inexcusable breach of professional ethics in the exercise of that freedom” (Alstyne, 1975: 163-164).

Academic community life is at the core of any higher education enterprise, and no genuine university collective can persist without academic integrity, professionalism, freedom of investigation and intellectual reliability. Furthermore, “what is needed is the skill and art of holding views strongly and yet of respecting views that are diametrically opposed” (Pelikan, 1992: 48). At least since the 19th century, in the tradition of the Humboldtian university, academic independence implied both professors’ freedom to *teach* (in terms of contents and methods) and students’ freedom to *learn* and thus choose their own courses (*Lehrfreiheit* and *Lernfreiheit*). “To make these freedoms operative, tenure (immunity from dismissal) was required. Professors cannot be free to teach as they feel truth demands, if they can be dismissed when authorities are offended or displeased by their teaching, and when their teachings are not allowed to violate established dogmata. Hence, tenure was required for the sake of academic freedom.” (Haag, 1994: 6). Among other things, tenure preserves the ability of professors to freely administer their research and safeguards their moral and intellectual independence.

Concerning the context of Orthodox theology as part of a broader university program and academic curriculum, it is usually those who are deemed reformists or liberals who are most often threatened when exercising academic freedom. There is, in fact, a constant tension between academic freedom and theological requirements (e.g. institutional mission) in religious higher education, including the one administered at secular (state) universities. At secular universities, academic theology is not constrained by church’s pastoral mission. It assumes an important critical task, supporting the development and expansion of theological knowledge. The proponents of this model understand the mission of a theologian as exploring and enriching the theological teaching, instead of just reaffirming the extant dogmas and doctrines. In that context, academic theology is not a

discipline in and for the *church*, but a discipline in and for the *university*: “If theological study is to occupy a place in the [religious] university, it must be conceived as a full academic discipline whose methods are appropriate to the nature of the university... What is precluded is the imposition – by authorities either within or external to the university – of the content of those sources or of a confining dogmatism, whatever the form” (Annarelli, 1987).

In line with the previous understanding of theology within a secular university, the German Catholic theologian, Professor Thomas Bremer (2022), refers to a special dimension “which is connected with the self-understanding of theology as a science: when theology is understood as science, then for it, in the epistemological and theoretical sense, the same conditions apply as for any other branch of science, which does not exclude a special role of the church. Other sciences also function in certain social and political contexts and are, to a certain extent, dependent on them. The role of theology, therefore, is not so exceptional. It is the right of every church to preserve its theological tradition, but it is an open question how it achieves that best. It is in the interest of theology, but also of the church itself, that the control over theology is left mostly to scientific discourse” (Bremer, 2022: 177)³.

On the other hand, Jaroslav Pelikan, a famous historian of Christianity from Yale, himself coming from a Lutheran pastor family, was not so optimistic regarding the ability of the church affiliated theological institutions to be communities of freedom and intellectual integrity: “I have been disappointed so often in institutional Christendom” (Pelikan, 1992). But at least the higher education institutions could provide some confidence in freedom of learning and research: “The university is, in God’s good world, the principal community through which human rationality can examine all existing communities, families and structures - including itself, but also including the One Holy Catholic and Apostolic Church - and thus can help them to become what they are” (Pelikan, 1992: 67).

John Henry Newman, a controversial 19th century English theologian, who was initially an Anglican priest and then a Catholic priest and cardinal, claimed in his *Idea of a University* (1854) that no church could be ‘catholic’ without being faithful to the early Church prior to its schism and division. He proposed this argument when he was elected rector of a new Catholic university in Dublin. Newman also pronounced the ideals of open inquiry, debate, and mutual progress as indispensable aspects of university life. The university is an autonomous place “in which the intellect may safely range and speculate, sure to find its equal in some antagonist activity, and its judge in the tribunal of truth. It is a place where inquiry is pushed forward, and discoveries verified and perfected, and rashness rendered innocuous, and error exposed, by the collision of mind with mind, and knowledge with knowledge” (Newman, 1856: 24).

3 The translation from Serbian language is mine.

Finally, Kallistos Ware, an Eastern Orthodox Metropolitan under the Ecumenical Patriarchate of Constantinople - one of the best-known modern Orthodox hierarchs and theologians - upholds an analogous view of the educational institution as a place for the freedom of intellectual discovery: "A college is a place where we constantly discover new rooms in the universe and in the human heart, in both macrocosm and microcosm; a place where we open the door to each other and invite one another to explore these rooms together" (Ware, 2000: 73-74). The university is, therefore, a place for cherishing wonder and pursuing truth, both of which demand freedom in order to prosper.

***Missio canonica* at the University of Belgrade**

Until recently, the Serbian Orthodox Church (SOC), an institution separated from the state by the Constitution of Serbia, has not interfered too much in the academic activity of the state owned Faculty of Orthodox Theology (FOT). A kind of *modus vivendi* maintained that very delicate institutional affiliation. However, this balance was disturbed in 2019-2020, when three professors (Bishop Maksim Vasiljević, Marko Vilotić and Rodoljub Kubat) were first suspended and then fired, primarily because of their public appearances and theoretical viewpoints that were opposed by the Holy Synod. As university teachers (two of them tenured), the state guaranteed those professors full freedom to express their scholarly ideas and conceptions, as well as ethical principles - both in faculty halls and in the general public. Soon after, the issue of incompatibility of the FOT Statute with the University of Belgrade (UB) Statute and the Law on Higher Education was opened wide. Namely, it became clear that the aforementioned professors were dismissed outside the regular university procedures and norms and that their human rights were also violated. Some of them are still litigating before the state courts. Bearing all that in mind, it is apparent why the UB administration in the fall of 2019, even before the dismissal of the three professors, raised the issue of the incongruity of the FOT Statute with the UB Statute, with the intention of finally resolving this legal problem at the university. Among other things, the statutory council of the UB referred to the violation of a series of statutory and legal norms in regard to the relations between the Synod and the FOT. However, the Synod and the FOT completely ignored the recommendations of the University Rectorate. On the initiative of the UB Rector, a university working group was then formed with the aim of helping the FOT in harmonizing their statute with the university's statute. A five-member working group, whose task was to overcome the problem of inconsistency between the provisions of the current FOT Statute and the UB Statute, dealt with that disputed matter in the period from October 2020 to March 2021. At the end of its mandate, the working group (with the exception of Prof. Porfirije Perić, the current Patriarch) fully supported the

majority opinion of the Committee for Statutory Issues of the UB that the concept of blessing (i.e. the consent of the bishops and the Holy Synod) is in contradiction with the law and the Statute of the UB (Vukomanović, 2022).

It is evident that for the UB academic community, the most expedient way to solve the problem of legality of the work of the FOT, as well as of any other faculty, was to harmonize the FOT statute with the UB Statute and the then valid Law on Higher Education concerning the following academic procedures: the approval of a bishop for study enrollment and applying for a teaching position and approval of the Holy Synod for teaching service of a FOT professor. That relatively minor problem of inconsistency between the two statutes was, unfortunately, “resolved” in a Solomonic fashion in 2021 by causing a much bigger problem: the adoption of the new Law on Higher Education, which clearly contradicts the Constitution of the Republic of Serbia.

In the legal order of the Republic of Serbia, until the passing of this Law in 2021, there was no constitutional, legal or statutory basis for the introduction of the concept of blessing (*missio canonica*) into the autonomous law of the UB, including the FOT. As it is well known, *missio canonica* is a specifically Roman Catholic concept, and the basis for its inclusion in a national law could be a concordat signed with the Vatican (as, for example, in the case of Germany or Croatia), which the Republic of Serbia never signed. Moreover, even if such an international agreement existed, the question is whether it could have been applied to the FOT, given that it is a faculty where the theology of another Christian denomination is studied.

It is known that today in Orthodoxy, the blessing is used concretely, in the legal sense, as a kind of permission for doing something. But that is a customary reduction of the true meaning of blessing, which is much broader than mere permission. A blessing could be given by any religious person, and even a lay person. The blessing in terms of consent for theological teaching, however, in the case of the FOT, is not even given by a bishop, but by the Synod, i.e. the executive body of the SOC. This is to ensure that the decision is conciliar, and not the choice of an individual. However, it remains an open question who can make the final call as for the truthfulness of church teaching. Certainly the church as such, but when it comes down to a group of people or even one person (as in the Roman Catholic Church), then things become more complicated. As aptly put by the German professor of theology Thomas Bremer: “One important element, therefore, is that the blessing in principle refers to the person, to the individual, and not to what that individual thinks or believes. A blessing serves to improve a person’s condition (which we all always need), it contains a desire for his well-being, not an approval of some trait or characteristic of him, such as what he teaches students or writes in his publications” (Bremer, 2022: 181).

However, the 2021 Law on Higher Education fully opened the door for the SOC to decide on student enrollment, as well as on application, selection and even dismissal of professors at the FOT. Such provisions were only valid between 1952 and 2004 when the FOT was under the full jurisdiction of the SOC and not a member of the UB. Namely, in 1952, by decision of the Yugoslav socialist government, the FOT was removed from the UB, and thus came under the jurisdiction of the Holy Synod, that took over the ownership rights over the FOT (renaming it into *Theological Faculty of the Serbian Orthodox Church*).⁴

Although the legislation of the Kingdom of Yugoslavia has not been applied since 1946 and is not directly relevant for modern educational legislation in Serbia, my insight into the PBF decrees signed by the ministers of education in 1921, 1932–1934 or 1935 clearly shows that the institute of blessing was not a part of the faculty- (PBF), or university-regulations in that country.⁵ It is clear, therefore, that all faculties of the Kingdom, without exception, including the FOT, had to strictly comply with the university regulations, which automatically excludes any influence of the SOC Synod on the work of the FOT.⁶ After all, that is also confirmed by the minutes of the FOT Council in the period from 1937 to 1944, in which there were recorded many cases of election to titles, from teaching assistants to full professors, but without mentioning any blessing of the Synod during the selection of the Faculty teachers (Vukomanović, 2022: 557).⁷

The New Law

Instead of the FOT being statutorily harmonized with other UB faculties, the autonomy of the UB was, thus, seriously infringed. From 2021 onwards, the Serbian Church, a non-university and non-state institution, has been allowed to

4 *Rešenje Vlade Narodne Republike Srbije*, V.S. no. 62, 15 February 1952.

5 See, for example, the Decree of the FOT at the University of the Kingdom of Serbs, Croats and Slovenes dated June 8, 1921, signed by the then Minister of Education Svetozar Pribičević (*Službene novine* III, No. 127) or the FOT Decree dated June 11, 1935 (Year XVII, No. 133-XXXIII, 1935), which was signed by the Minister of Education Stevan Ćirić. Moreover, the Minister of Education had supreme supervision over the activities of all religious schools in the Kingdom.

6 The Law on the Serbian Orthodox Church from 1929 (Art. 18, Paragraph 2), in which it was stipulated that “professors and assistant professors of the Faculty of Theology, who are elected according to the Law on Universities, [they] are appointed after the candidate’s religious suitability has been previously determined by evaluation Holy Synod of Bishops”. However, a careful analysis of that article of the Law shows that these professors and assistant professors were elected according to the Law on Universities (1930), and the aforementioned Law on the SOC did not automatically give the right to the Synod to intervene independently, but only to start an initiative with the minister education for the elimination of “proven disagreements” (Vukomanović, 2022: 556).

7 I had direct access to facsimiles of a whole series of minutes from that period (1937–1944) and none of them mentioned the blessing of the Synod for the election of any FOT teacher.

legally supervise the enrollment of students, and the selection and dismissal of the state university teachers. The fact that a non-university institution, with the support of the Ministry of Education, violated the university's autonomy is no longer only a problem for the FOT, but also for the state (Belgrade) university, because the provisions of the 2021 Law are in conflict with the Constitution and some fundamental academic norms of the UB, valid since its establishment in the early 19th century.

The new Law on Higher Education is not in accordance with the Constitution of Serbia in the provisions that foresee the consent of church authorities for study enrollment, participation in a teacher's application process, establishment of employment and loss of position (termination of employment) at the FOT. Considering the principle of secularity of the state and the strict legal distinction of church and state, as well as the guaranteed autonomy of university (which would be infringed if any non-university body had influence on the enrollment of students and the selection of teachers), it follows that the Constitution was directly violated in the provision guaranteeing the autonomy of universities (Article 72).

When it comes to the interpretation of constitutional norms and principles, the Constitutional Court in Serbia could, for example, assess the constitutionality or legality of the 2021 Law on Higher Education, especially with regard to protecting the autonomy of universities (Art. 72), the freedom of scientific and artistic creation (Art. 73), the secularity of the state (Art. 11) and the right to a legal remedy (Art. 36). Finally, the religious and academic freedoms are expressed by the full freedom of the theology professors to present their own theoretical and theological-philosophical ideas, concepts and interpretations that do not violate the boundaries of possible heterodoxy and can represent a contribution to the development of theology and encouragement for dialogue, both with representatives of one's own religion and with colleagues from other confessional backgrounds and traditions.

Orthodox theology at the FOT is shaped, taught, and designed (in terms of the curricula) by professors of Orthodox theology. The prelates who assemble in the Holy Synod are not necessarily, nor as a rule, Orthodox theologians. They are the higher clergy looking after their dioceses and the Church as a whole, but they are not in charge of the Orthodox theology programs. First of all, they do not have appropriate academic competences. Among those bishops, there are, admittedly, some theologians with professorial titles, but the number of them in the composition of the Synod is much smaller, and most often they are not in that body at all. All this is a bit like the difference between lawyers in high positions in the judiciary and law professors. Law professors make curricula and programs at the Faculty of Law, but judges of the Constitutional Court, for example, do not do this, although one can find some law professors among them. But even those judges propose and adopt, together with their colleagues, the plans and programs

at the Faculty of Law as *professors* of that faculty, and not as *judges* of the Constitutional Court. When it comes to teaching at the FOT, all the professors who teach there are, as a rule, theologically trained Orthodox believers, and some of them are also (arch)priests, so they would not even be expected to present something contrary to Orthodox teachings (Vukomanović, 2022).

Taking over the powers of the Holy Synod over the FOT curricula could further generate a series of professional and practical problems, such as those that the UB has faced since May 2017, when a group of 12 theology professors (including a bishop) signed a statement in reaction to the petition of Serbian creationists. Among other things, they claimed that there was no plausible alternative scientific theory that could replace the theory of evolution. Moreover, those theologians advocated the position that there was no ‘biblical *theory* of creation’ that could be understood as a scientific theory, that is, a scientific alternative to the theory of evolution. Thus, they claimed that “none of the institutions, recipients of this petition, have jurisdiction to interfere in any area of science and perform ‘revision’ of a scientific theory that is studied by, and taught to, students”.⁸ They further reminded that similar initiatives for ‘revision’ could not, at least in principle, be launched by groups of citizens (notwithstanding their number or reputation), but only by science and its relevant disciplines, such as biology, that is, by a community of experts with an appropriate level of expertise. These theologians also referred to the long-term scientific practice, based on research, which made possible civilizational progress. Accordingly, the signers of the Petition were invited to conduct their own research and propose theories alternative to the Theory of Evolution; there are no shortcuts for this procedure. In fact, there are “no plausible alternative scientific theories that could replace” the Theory of Evolution. This includes the “biblical creation theory,” which is not a scientific alternative to the Theory of Evolution. Therefore, the Bible is not a textbook pertaining to a scientific discipline. For example, the Book of Genesis does not even belong to this genre of literature. There may be studies in schools within the programs of religious education, literature, art and philosophy, but this is not science, notwithstanding its importance for education and the value systems of students. “Insofar as the Christian interpretation of the Bible cannot provide a valid scientific alternative to biology, biology itself (or for that matter, physics or anthropology) may not offer a valid religious alternative to the Christian doctrine of God, human being and the world”.⁹ The theologians concluded by expressing their hope and trust that the relevant state institutions would not launch any process that could compromise the study of the Theory of Evolution in the elementary, high school and university education in the Republic of Serbia.

8 <https://www.danas.rs/drustvo/professori-bogosloviije-teorija-evolucije-nema-zamenu/>. Accessed September 3, 2023.

9 Ibid.

The announcement of Serbian Orthodox theologians was met with a very negative reaction from the Holy Synod. Shortly after the conclusion of the Holy Council of Bishops (May 2017), some teachers with priestly titles were denied main duties in their parishes, and were only allowed to co-serve in liturgies. Others were dismissed from the editorial offices of the SOC electronic and printed media, and that decision was made personally by the late Patriarch Irinej.¹⁰ At the same time, he forbade as many as five professors to make public statements in the future without his blessing. All of this was accompanied by a warning that church disciplinary proceedings would be initiated against those who break that rule.

In the period from 2019 to 2021, three theologians were even deprived of their teaching positions at the FOT for reasons similar to those that caused the unusually strict sanctions of the church leadership in 2017. The adoption of the new state Law on Higher Education, instead of having a favorable effect on the 'identity, doctrine and perception' of the SOC, has only paved the way for new purges at the FOT¹¹ and the dying out of those voices in Serbian Orthodox theology who are able to recognize the signs of the times (Vukomanović, 2022).

Conclusion

In conclusion, I would note that the outset of the 21st century Serbia saw the emergence of a small liberal wing within the SOC (Vukomanović, 2020). From time to time, those liberal proclivities could be detected in public speeches and media interviews more than in the official church gatherings and ecclesiastical bodies. Apart from their moderate pro-European stance which could, at least partly, be explained by these bishops' appointments in the western diaspora, this liberal current supports the modernization and gradual revitalization of the church, including a more independent (university- and not church-oriented) status of the FOT. I am inclined to believe that the outlooks of the "rebellious" theologians at the FOT display some traits of this kind of influence. Here we speak of a predominantly younger generation of Serbian Orthodox professors of theology, born mainly in 1970s and 1980s. They intellectually came of age during the post-Milošević democratic period and this could have influenced their political and social upbringing. They are predominantly the millennials educated in modern schools, or at the post-2000 University of Belgrade. Darwin is part of their secular education, just like Nikolaj and Justin are chapters in their theological curricula and literature. Some of them were active in alternative educational projects (such as the regional peacebuilding and reconciliation programs of various CSOs) and,

10 <http://www.politika.rs/sr/clanak/382287/Muk-na-Bogoslovskom-fakultetu-posle-cistke-zbog-Darvina>. Accessed March 5, 2021.

11 At the time when this article was submitted to this journal, two more junior professors of theology had already been forced to leave the FOT for similar reasons.

with their no small international experience, they are normally inclined towards ecumenical dialogue and state of the art theology. With the more pronounced, or at least tacit, support of bishops who serve predominantly in the western diaspora, they do have all the necessary preconditions for nurturing their reformist and modernist views in both theological and ecclesiastical matters. It remains open to see, in the decades to come, how profoundly they are going to participate in the long-awaited and much-needed rejuvenation of the SOC.

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