

Employing Confessional Theology Professors in Serbia: (Ir)Reconcilability of Religious Freedom, Academic Freedom, and Guarantees of Labour Rights*

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Abstract: This paper aims to shed light on the ongoing discussion on allowing church authorities to supervise the selection of theology professors at the University of Belgrade Faculty of Orthodox Theology. After providing a summary of the characteristics of the religious ethos employer, particularly confessional theological faculties, the paper outlines the legislative history and social context of regulating the selection and employment of theology professors in Serbia. Special attention is provided to the church authorities’ approval (blessing) for the selection of professors, as well as their approval for individuals to engage in the teaching of students. This is followed by a consideration of challenges related to reconciling the religious freedom (and institutional autonomy) of the church on the one side, and the academic freedom of confessional theological faculties and their professors on the other. Finally, the paper explores the issue of protecting these employees’ labour rights, particularly in light of risks stemming from employment under ambiguous conditions, the need to more precisely determine the legal ramifications of violating the duty of loyalty (and punishing employees progressively for such violations), and the procedural guarantees necessary for the effective protection from wrongful termination of employment and the right to an effective remedy.

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SECOND PART

3. Church Supervision Over the Selection and Work of Professors at the University of Belgrade Faculty of Orthodox Theology

3.1. Legislative ‘History’ and Social Context

Serbia is a secular state, meaning it does not have a state church, while the vast majority of its citizens identify as Orthodox Christians (more than 85%)¹. The University of Belgrade Faculty of Orthodox Theology is the only state faculty of confessional theology in Serbia. It prepares students for the priesthood and religious teaching, as well as for scientific work in the field of theology. This Faculty was established as part of the state university system by the Law on the University in 1905, along with four other faculties (Faculty of Philosophy, Faculty of Law, Faculty of Medicine, and Faculty of Technical Sciences)². Due to a lack of qualified lecturers, as well as the outbreak of the Balkan Wars and World War I, the Faculty of Orthodox Theology began operating only 15 years later³. Its professors were selected according to the Law on the University; however, in line with the provisions of the Law on the Serbian Orthodox Church (1929), the appointment to a professorship was possible only after the Holy Synod of Bishops of the Serbian Orthodox Church determined the religious suitability of the candidates⁴. Additionally, in cases where there were “proven discrepancies” between a professor’s behaviour and the teachings of the Orthodox Church, the Synod initiated actions through the ministry of education to address these discrepancies⁵.

¹ See: Republički zavod za statistiku, *Stanovništvo prema veroispovesti*, available on <<https://data.stat.gov.rs/Home/Result/3104020301?languageCode=sr-Latn>>.

² More recent research, however, indicates that the earliest higher education theological institution was the Spiritual Collegium for Young Theologians established in 1740 or 1741, which educated students based on the Kyiv spiritual tradition. VUKAŠINOVIĆ, *Visoko teološko obrazovanje kod Srba*, in VUKAŠINOVIĆ (ed.), *Bogoslovlje kod Srba: izazovi i perspektive*, Pravoslavni bogoslovski fakultet, 2022, 19-24.

³ Serbia was then a part of the Kingdom of Serbs, Croats, and Slovenes, or the Kingdom of Yugoslavia, which had two additional confessional theology faculties: Roman Catholic theological faculties in Zagreb and Ljubljana.

⁴ Law on the Serbian Orthodox Church (*Official Gazette of Kingdom of Yugoslavia*, no. 269/1929), Art. 18, par. 2.

⁵ Law on the Serbian Orthodox Church, cit., Art. 18, par. 1.

After World War II, a revolutionary change in government took place, resulting in the creation of a new state based on a predominantly Marxist ideology. This shift entailed aggressive secularisation typical for communist regimes, leading to the removal of all religious content from education at all levels⁶. Consequently, in 1952, the Faculty of Orthodox Theology was abolished as a state institution and excluded from the University of Belgrade. The Faculty continued to function as the Theological Faculty of the Serbian Orthodox Church, under the auspices of the Holy Synod, which included, among other things, the Synod's prerogatives regarding the selection of theology professors⁷.

The decision to abolish the Faculty of Orthodox Theology as a state institution was revoked in 2004, as democratic changes in Serbia brought about a revised relationship of the state to religion, which included the reinstatement of religious education. This made the Faculty of Orthodox Theology a member of the state-held University of Belgrade once again, but it remained «under the spiritual and canonical auspices of the Serbian Orthodox Church»⁸. This was also confirmed by the provision of Art. 3, par. 1 of the Statute of the Faculty of Orthodox Theology (2006): «The Faculty is a scientific and the highest education institution in the field of Orthodox theology at both the University of Belgrade and the Serbian Orthodox Church». This is reflected, among other things, in the influence of the Church on students' admissions and the selection of theology professors, with both requiring the approval of Church authorities.

The Faculty of Orthodox Theology traditionally required the Church's consent for an individual's participation in the call for a professorial position, as well as for the selected candidate's participation in teaching. This practice is established by the Faculty's Statute provisions regarding the approval (blessing – known as *blagoslov* in Serbian)⁹ of a bishop

⁶ After the conflict between the Yugoslav political leadership and that of the USSR (1948), a political system of self-management had been introduced. Self-management was supposed to defend the self-importance of the Yugoslav socialist system in relation to the prevailing Stalinism and the leading role of the USSR, as well as to develop a new image of the state that would be acceptable to the West, since self-management negated totalitarianism and opened the possibility for the development of democracy and market relationships. During later stages of the development of Yugoslav socialist society, the intense restriction of religious freedom was gradually replaced by the state's cooperation with religious organisations.

⁷ Cf. Basic regulations on Theological Faculty of the Serbian Orthodox Church of 1954 (Art. 7, par. 1, al. g, d), and Art. 15), of 1955 (Art. 6, par. 1, al. g, d, dj)), of 1970 (Art. 6, paras. g, d)), and of 1998 (Art. 12, par. d), and Art. 29), cited according to the texts of the Regulations published in: VUKAŠINOVIĆ (ed.), *Stoleće Pravoslavnog bogoslovske fakulteta – Tom I*, Univerzitet u Beogradu – Pravoslavni bogoslovski fakultet, 2023, 79-99, 113-122, and 136-170).

⁸ Statute of the University of Belgrade – Faculty of Orthodox Theology (2006), Art. 2, para. 8 (acc. to the text of the Statute published in: VUKAŠINOVIĆ [ed.], *Stoleće Pravoslavnog bogoslovske fakulteta – Tom I*, Univerzitet u Beogradu – Pravoslavni bogoslovski fakultet, 2023, 208-269).

⁹ The term “blessing” carries a specific theological significance, considering it not only implies consent but also indicates that divine grace is invoked upon the individual to transmit faith in a true and authentic manner. For this reason, Bremer notes that, unlike the *nihil obstat*, a blessing is not aimed at identifying a “wrong” development in an individual and the Church authorities taking appropriate corrective action. Instead, it is tied to the trust that Church authorities have in the individual's development in a way that benefits theology and, consequently, the Church. A blessing, therefore, pertains to the individual as a person, rather than what they think or believe, and thus, ‘serves to improve the state of the person (which is needed by everyone). It contains the wish for their well-being, rather than an endorsement of a particular trait or characteristic, such as what they teach students or write in their publications’. BREMER, op. cit., 181.

for applying for the position of teacher, lecturer, assistant, or researcher at the Faculty¹⁰, as well as the approval of the Holy Synod of Bishops for the teaching service¹¹. More specifically, this means that the employment of a theology professor is preceded by the selection of an individual for the position of professor, with dual supervision of the selection process.

The first form of supervision concerns *participation in the call for the position of professor and the entering into employment relationship* at the Faculty. A candidate must obtain the “*approval (blessing)*” of a bishop in addition to proving they meet the required knowledge, skills, and competencies. However, neither the Church’s acts nor the Faculty’s statutes established criteria for obtaining a blessing, nor do they regulated the procedure for granting or revoking it; instead, the decision to grant a blessing was at the bishop’s discretion. The Statute of the Faculty, only after the 2022 amendments, explicitly stipulates that blessing has as its aims ‘maintenance of the right to free, autonomous and authentic interpretation of the religious identity of Serbian Orthodox Church’, as well as ‘improvement of spiritual and theological culture, and establishing of ethical standard of maintenance of canonical order, church spirituality and moral of professors and students’¹². Also, Amended Statute establishes the obligation of the Faculty to regulate conditions and procedure for obtaining a blessing, as well as a procedure for its revoke¹³.

The second form of supervision pertains to the possibility of the individual, whom the Faculty’s Selection Committee has chosen as a professor of theology, to lecture and participate in other forms of teaching at the Faculty. This “*approval for teaching service*” is issued by the Holy Synod of Bishops, the highest administrative and supervisory authority of the Serbian Orthodox Church, which consists of the Patriarch and four archbishops. The Faculty’s Statute did not include rules on the procedure for granting or revoking this approval, although for professors already employed at the Faculty, revoking an approval could result in the termination of employment. The Law on Higher Education, only after the 2021 amendments, explicitly specifies the revocation of approval as a reason for the loss of professorial title, while the Statute of the Faculty, only after the 2022 amendments, explicitly stipulates this issue, including termination of employment because of revoke of approval for teaching service.

Whether the rules governing the first form of Church authority supervision were suitable was first considered in 2012, by the Commissioner for the Protection of Equality, an inde-

¹⁰ Statute of the University of Belgrade – Faculty of Orthodox Theology, cit., Art. 91.

¹¹ Statute of the University of Belgrade – Faculty of Orthodox Theology, cit., Art. 95, par. 4.

¹² Decision on the Amendments to the Statute of the University of Belgrade – Faculty of Orthodox Theology (2022), Art. 3a), paras. 2-3 (acc. to the text of the Decision published in VUKAŠINOVIĆ [ed.], *Stoleće Pravoslavnog bogoslovske fakulteta – Tom I*, Univerzitet u Beogradu – Pravoslavni bogoslovski fakultet, 2023, 315-324).

¹³ Decision on the Amendments to the Statute of the University of Belgrade – Faculty of Orthodox Theology, cit., Art. 3a), par. 4, and Art. 9-10.

pendent body that oversees the implementation of the Law on the Prohibition of Discrimination¹⁴. The Commissioner did not directly address the question of whether the blessing was justified or not, but it can be indirectly inferred that the existence of this institute is deemed acceptable. The Commissioner also found that the Statute of the Faculty of Orthodox Theology established the blessing as a requirement for all potential candidates applying for a professorial title, so in itself, this requirement does not place any individual at a disadvantage based on their religion or religious beliefs¹⁵. At the same time, it was pointed out that the relevant provisions of the Statute open *the possibility for indirect discrimination* because ‘the purpose of granting approval (blessing) is not explicitly stated, making it difficult to assess the legality and legitimacy of such an act, which is necessary when determining indirect discrimination; there are no prescribed criteria for obtaining approval (blessing); the procedure and manner of granting approval (blessing) are not regulated. Due to all these circumstances, it is evident that approval (blessing) is an act that the bishop gives or revokes based on broad discretionary authority. The overall consequence is the creation of complete legal uncertainty, as a result of the unpredictability of the outcome of the procedure for obtaining approval (blessing). Without delving into the religious nature of the blessing, its introduction into the Faculty’s statute certainly requires it to be treated like any other condition for enrolment in a study program or for applying for a certain title, which implies that the fulfilment of this condition is decided based on objective and pre-established criteria, which are, moreover, in line with anti-discrimination standards. For this reason, in order to prevent indirect discrimination, the Commissioner recommends that granting approval (blessing) either be removed from the Statute or that criteria based on which approval (blessing) is granted be more precisely regulated whilst fully adhering to anti-discrimination regulations that bind all higher education institutions¹⁶.

The Faculty of Orthodox Theology had complied with the recommendation of the Commissioner for the Protection of Equality only after the 2022 amendments of its Statute. However, these rules (and legal gaps) have attracted the public’s attention to cases of the revoking approval for teaching for several professors of the Faculty of Orthodox Theology between 2020 and 2024. Namely, part of the academic community in Serbia believes that the rules on blessing for application and the approval for teaching violate the Constitutional principles of separation of church and state, as well as university autonomy. This was highlighted in the ‘appeal to abolish the blessing’ signed by 200 professors and research associates in Serbia, as well as in notices by the Network of Academic Solidarity and Engagement (*MASA*). The Network’s last notice condemns the dismissal of one of the 12 professors and associates who signed the “Statement” in 2017 against the petition calling for

¹⁴ Law on Prohibition of Discrimination (*Official Journal of the Republic of Serbia*, no. 22/2009, 51/2021).

¹⁵ Opinion of the Commissioner for Protection of Equality on the complaint of the association A. S. against Faculty of Orthodox Theology for discrimination based on religious beliefs in the filed of education, no. 1065, October 14, 2012.

¹⁶ Opinion of the Commissioner for Protection of Equality, *ibid.*

the revision of studying the theory of evolution under Serbian education system (petition for removing the theory of evolution from school curricula for biology with an affirmation of biblical teaching on creation). After the “Statement” was published, the Patriarch banned the public appearance of all employees at the Faculty of Orthodox Theology without his prior approval¹⁷. In this regard, the *MASA* notice states that «the persecution of enlightened intellectuals, unrestrained by dogmas, is an integral part of the long-standing undermining of education and expertise», and that in the case of the Faculty of Orthodox Theology, «this attitude of the political elites towards higher education, as well as the opportunistic condescension towards certain church dignitaries, sealed the fate of the aforementioned group of professors, assistant professors, and assistants, who were publicly stigmatised before being gradually removed» from the Faculty. Specifically, the notice concerned an assistant professor and priest, who, upon signing the appeal against the petition against the theory of evolution, was banned from performing his priestly function but not from working at the Faculty. Following this decision, this employee publicly criticised certain activities of the Holy Synod, the Faculty of Orthodox Theology, and lastly the Church (regarding the communion of believers during the Covid-19 pandemic). As a result, the Selection Committee of the Faculty of Orthodox Theology did not re-elect said employee following the call for the position of assistant professor, despite the positive report of the expert commission, which is why he no longer works at the Faculty. Prior to this event, the decision to ban work was made against two full professors, one of whom was a bishop, who highlighted the necessity to consider allegations pertaining to certain illegal activities at the Faculty. One of these professors publicly criticised the work of the Holy Synod, and the decision to ban him from performing his professorial duties explicitly stated that no appeal was allowed against the decision¹⁸.

The subsequent cases prompted the competent authorities and bodies of the University of Belgrade to assess whether the provisions of the Faculty of Orthodox Theology’s Statute (2006) were in accordance with the Statute of the University of Belgrade, as well as with the Law on Higher Education. In 2019, the University’s Management requested the Committee for Statute Issues to express its opinion on the compliance of the two statutes¹⁹. This expert and advisory body of the Senate, Council, and Rector of the University of Belgrade adopted a conclusion that the Statute of the Faculty of Orthodox Theology does not comply with the Statute of the University of Belgrade, but the University Senate did not confirm this conclusion. The following year, at the initiative of the Rector of the University,

¹⁷ *Podrška docentu PBF Vukašinu Miličeviću*. Available online: <<https://akademski-masa.org/>>.

¹⁸ VUKOMANOVIĆ, Nihil obstat – srednjovekovne stranputice visokog obrazovanja u Srbiji, in *APFB* 2022, 2, 575.

¹⁹ VUKOMANOVIĆ, *ibidem*.

a working group was formed to analyse the opinion of the Committee for Statute Issues, as well as the relevant legal sources in the area of theological academic teaching in other legal systems²⁰. Based on these analyses, most members of the working group supported the conclusion of the Committee for Statute Issues.

The aforementioned events influenced the adoption of amendments to the Law on Higher Education²¹, which stipulates that «higher education institutions that offer academic study programs in the field of theology of one of the traditional churches and religious communities are authorised to prescribe, through a general act, as a necessary condition, the consent of their competent authority for participation in the call for the selection of professors and assistants, as well as the consent of their competent authority for the selection to the post of professor (consent for the teaching service)»²². Notably, the consent for the teaching service is explicitly qualified by the Law as a «mandatory condition for entering into an employment relationship»²³. The withdrawal of the latter consent results in the loss of the title if the competent authority of the traditional church or religious community revokes this approval because the «activities, views, or behaviour of that person are contrary to the beliefs that the church or religious community preaches, its teachings or the autonomous rights of the church or religious community, or if they undermine its reputation»²⁴.

Higher education institutions are left to regulate, through their general legal acts, the reasons for revoking consent for the teaching service, the involvement of higher education institution representatives in this process, and the right of the professor to make a statement on the decision²⁵. The adoption of this solution renewed the discussion over the validity of these forms of Church control, particularly to assess how this new legal framework complies with the principle of university autonomy and the guarantees of labour rights.

3.2. Challenges of Reconciling Religious Freedom with University Autonomy (and Academic Freedom)

3.2.1. Multiple Aspects and Limits of Academic Freedom

The guarantee of academic freedom rests on the guarantees of freedom of thought and expression, as well as the presumption that knowledge can be developed only through

²⁰ VUKOMANOVIĆ, *ibidem*.

²¹ Law on Amendments to the Law on Higher Education (*Official Journal of the Republic of Serbia*, no. 67/2021), Art. 18.

²² Law on Higher Education (*Official Journal of the Republic of Serbia*, no. 88/2017, 73/2018, 27/2018, 67/2019, 6/2020, 11/2021, 67/2021, 76/2023), Art. 74, para. 13. The following are considered traditional churches in Serbia: Serbian Orthodox Church, Catholic Church, Slovak Evangelical Church, Christian Reformed Church, and the Evangelical Church. Traditional religious communities are the Islamic and Jewish religious communities (Law on Churches and Religious Communities, *Official Journal of the Republic of Serbia*, no. 36/2006), Art. 10.

²³ Law on Higher Education, cit., Art. 74, par. 14.

²⁴ Law on Higher Education, cit., 74, par. 15.

²⁵ Law on Higher Education, cit., 74, par. 16.

unhindered analytical scepticism and critique²⁶. Therefore, academic freedom is not a goal in and of itself but rather a necessary requirement for the proper functioning of modern-day universities, or a tool that enables universities to serve the greater good²⁷: «open communication of findings, hypotheses, and opinions lies at the very heart of higher education and provides the strongest guarantee of the accuracy and objectivity of scholarship and research»²⁸. This is achieved through an individual and collective dimension of academic freedom, as well as the duties of public authorities to respect and protect academic freedom, or in other words, to create conditions for its effective enjoyment²⁹.

The *individual dimension of academic freedom* is related to both professors and students and is expressed through the freedom to study and teach, the freedom to conduct scientific research and elaborate the results, as well as the freedom to perform other professional activities in addition to working at the faculty³⁰. In terms of professors, the individual aspect of academic freedom especially includes the freedom to teach students and perform scientific research without the interference of other individuals whilst adhering to professional rules, the fulfilment of which is left to be judged by other colleagues³¹. Furthermore, academic freedom entails the freedom to express views on the institution where the professor is employed, protection from institutional censorship, and freedom to partake in professional or academic bodies³².

The *collective (institutional) side of academic freedom* entails the freedom of academic institutions to decide on the teaching subject and methods, who can teach students, as well as who can enrol in study programs³³. More specifically, it is concerned with the enjoyment of the degree of autonomy necessary for the institution's effective decision on academic work, administration, and related issues³⁴. This freedom is enjoyed not only by universities but also by all higher education units within the university (faculties, research institutes, etc.), which is why the university as a whole and all its units have the right and obligation to protect and develop academic freedom in all their (inner and outer) activities³⁵. The content and manner of expressing institutional academic freedom can, however,

²⁶ McCONNELL, *Academic freedom in religious colleges and universities*, in *Law and Contemporary Problems*, 1990, 3, 312.

²⁷ VRIELINK *et al.*, *Academic freedom as a fundamental right*, in: *League of European Research Universities Advice Paper*, 2010, 6, 3.

²⁸ UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, 11 November 1997, Paris, Preamble.

²⁹ VRIELINK *et al.*, *op. cit.*, 3.

³⁰ VRIELINK *et al.*, *ibidem*.

³¹ McCONNELL, *op. cit.*, 305.

³² UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, *cit.*, par. 27.

³³ McCONNELL, *op. cit.*, 305.

³⁴ UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, *cit.*, par. 17.

³⁵ VRIELINK *et al.*, *op. cit.*, 3.

vary depending on the type of academic institution³⁶. The mentioned principles apply to confessional theological faculties as well, which is why their academic freedom implies the right to teach and study theology within the framework of the appropriate religious tradition³⁷. However, when it comes to the segment of institutional academic freedom related to the right of the academic institution to decide on who may teach in its study programs, the general rule is that professors are selected solely based on their academic merit, i.e. on their teaching and research excellence, expertise and experience³⁸. The exception is theological faculties, where in addition to academic merit, employees are required to have the duty of loyalty³⁹.

Academic freedom is not limitless: when there are legitimate reasons that cannot be addressed in another, less invasive way, this freedom can be limited. Its constrictions are primarily related to respect for human rights and the fundamental freedoms of others or the duty of respecting the constitution as well as the laws governing human rights and fundamental freedom⁴⁰. In this sense, academic freedom is primarily limited by the rights and freedoms of students⁴¹. Additionally, the limits of academic freedom should also be sought in the discord that exists between the individual and collective aspects of academic freedom, considering that professors are members of the faculty, members of various organisational bodies at the faculties, as well as members of the university (as a whole). «The individual's freedom is therefore limited and partially determined by the institutional context(s) in which he or she works»⁴². In any case, the academic freedom of professors can be limited only in situations in which certain constraints are necessary, and only to the degree necessary to achieve the institution's legitimate academic goals while using tools that correspond to the said goals⁴³.

3.2.2. Autonomy and Academic Freedom of the University of Belgrade and Faculty of Orthodox Theology (and Their Professors)

In light of the presented principles, one should consider the need to reconcile the rights of the Serbian Orthodox Church to self-determination on the one hand, and academic freedom on the other. The Constitution of the Republic of Serbia guarantees the autonomy of

³⁶ UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, cit., par. 17 («Autonomy is that degree of self-governance necessary for effective decision making by institutions of higher education regarding their academic work, standards, management and related activities consistent with systems of public accountability, especially in respect of funding provided by the state, and respect for academic freedom and human rights. However, the nature of institutional autonomy may differ according to the type of establishment involved»).

³⁷ McCONNELL, op. cit., 306.

³⁸ VRIELINK *et al.*, op. cit., 10.

³⁹ VRIELINK *et al.*, *ibidem*.

⁴⁰ VRIELINK *et al.*, op. cit., 5.

⁴¹ VRIELINK *et al.*, op. cit., 10.

⁴² VRIELINK *et al.*, op. cit., 11.

⁴³ VRIELINK *et al.*, op. cit., 20.

universities and higher education and research institutions, confirming that these entities' autonomy is reflected in their independence in deciding about their inner organisation and work⁴⁴. In accordance with the provisions of the Statute of the University of Belgrade, the autonomy of this university is related, among other things, to the selection of professors and assistants⁴⁵, which some authors interpret as meaning that «non-university bodies and organs cannot and must not influence the described procedures»⁴⁶. This stance, however, does not seem applicable in terms of the Faculty of Orthodox Theology, even though the institutional autonomy of this faculty is tied to the freedom to decide who will teach their students, with the general rule that professors are elected based on their experience, expertise, and teaching and research excellence. However, in terms of the Faculty of Orthodox Theology, as an institution whose ethos (value system) rests on the Orthodox Christian religion, employees may be required the duty of loyalty in addition to their academic merit. For these types of institutions, this is explicitly confirmed in the advice paper of the League of European Research Universities⁴⁷. The proper and full consideration of adherence to or violation of the duty of loyalty of employees in such a work environment is not incompatible with the participation of church authorities through granting/revoking approval for the teaching service. In Serbian law, this falls under the authority of the Holy Synod, which «aims to ensure that the decision is collegial and not just the resolution of an individual»⁴⁸.

In connection to this, it should be mentioned that in the discussion initiated in the Serbian academic community, as an argument in favour of abandoning the Synod's approval for the teaching service, it is highlighted that members of the Synod lack the “scientific competencies” to assess the teaching and scientific work of theology professors. It is pointed

⁴⁴ Constitution of the Republic of Serbia (*Official Journal of the Republic of Serbia*, no. 98/2006, 115/2021), Art. 72.

⁴⁵ Statute of the University of Belgrade (*Journal of the University of Belgrade*, no. 201/2018, 207/2019, 213/2020, 214/2020, 217/2020, 230/2021, 232/2022, 233/2022, 236/2022, 241/2022, 243/2022, 244/2023, 245/2023, 247/2023), Art. 10, par. 1, al. 5.

⁴⁶ VUKOMANOVIĆ, op. cit., 581.

⁴⁷ VRIELINK *et al.*, op. cit., 10.

⁴⁸ BREMER, op. cit., 181. This author cleverly points out that theology is not the only science influenced by non-university entities. Such is the case with other sciences as well, given they do not develop in a vacuum but rather in a specific social context. This is vividly illustrated by an example of a law professor in some European country who advocates for reintroducing the death penalty or torturing the convicts. His colleagues would undoubtedly have debated him in academic publications, and he would most likely become isolated in his scientific field, despite that fact that there is no entity outside the university that formally controls the findings of the legal science. Instead, the control over the direction of legal science research is performed by society, which decided against the death penalty. We suppose that something similar would have happened if, for example, a labour law professor was to campaign for the introduction of forced labour to support economic growth. Such a view most certainly would not constitute a valid reason to dismiss the professor, but society would most likely respond by, say, not allowing the professor to obtain (faculty and external) financial support for a research project dedicated to introduction of forced labour. ‘Thus, society, or the state, has mechanisms to influence the research field in an academic environment without hurting the autonomy of the university’ (BREMER, op. cit., 183). A similar argument is provided by Williams, who argues that members of the academic community must realise that every institution has reasonable restrictions and does not imply that one can engage in any issue regardless of societal antagonism to a particular subject. WILLIAMS, op. cit., 15.

out that members of the Synod neither have completed doctoral studies nor have been appointed to university positions⁴⁹. This argument seems unconvincing, given that the Synod, when granting approval for the teaching service, does not assess the quality of published books and papers, the relevancy of presentations at scientific conferences, or other aspects of the candidate's academic excellence, but rather their adherence to the duty of loyalty that professors owe not only to the Faculty (as their employer) but also the Orthodox religion. This is particularly relevant considering that the most important aspect of studying at the Faculty of Orthodox Theology is its confessional nature. Accordingly, the authority of the church whose teaching is being studied at the faculty does not seem incompatible with the autonomy of the faculty (and the university), especially considering it is grounded in national legislation and tradition⁵⁰. Bremer explains this as follows: «... when theology is understood as science, then the same conditions apply to it, both epistemologically and theoretically, as for any other scientific branch, which does not exclude the special role of the church»⁵¹. Abolishing the rules related to blessing and approving the teaching service would undermine the church's ability to preserve and transmit its beliefs, which would in turn mean limiting religious freedom⁵².

3.3. Employment Status of Theology Professors and Suggestions for Its Improvement

3.3.1. Conditions and Procedures for Entering into an Employment Relationship

In Serbia, the labour rights of theology professors are regulated by the Law on Higher Education, and subsidiarily by the Labour Law. Although Serbia, as part of its commitment to becoming a member of the European Union, is in the process of aligning its legislation and practices with Dir. 2000/78, certain issues in this field have not yet been addressed. This also applies to the exception to the prohibition of discrimination related to religious ethos employers, given that this issue has not been addressed either by the Labour Law or the Law on the Prohibition of Discrimination.

Given the universality of labour rights, their effective enjoyment must be ensured for theology professors as well. However, this category of employees has a special employment status since their rights, obligations, duties, and responsibilities are regulated in line with specificities of their employer. These specificities are primarily reflected in the fact that this employer is engaged in higher education and scientific research, as activities of public interest. The Faculty prepares future priests and religious teachers for their occupation, and so transmits to students not only knowledge and skills but also spiritual experiences and faith, which should manifest in the personal life of an individual. It is therefore justi-

⁴⁹ VUKOMANOVIĆ, op. cit., 578.

⁵⁰ RAKIĆIĆ, op. cit., 337.

⁵¹ BREMER, op. cit., 177.

⁵² MCCONNELL, op. cit., 312.

fied when employing a theology professor to assess their personal circumstances relevant to a life aligned with religious dogmas, in addition to their educational abilities, scientific research results, and contributions to the academic and broader community.

Considering that confessional theology, relying on the authority that higher education holds in the contemporary world, «influences the identity, doctrine, and perception of a particular confession», it is essential to ensure that the church has «the right to keep this influence within the boundaries of its self-determination»⁵³. This is achieved through the participation of church authorities in the selection of theology professors, as well as through professors heightened duty of loyalty, because «faith, to remain credible, must be taught by a person whose way of life and public statements are not flagrantly inconsistent with a particular faith, especially if it regulates the private life and personal beliefs of its followers»⁵⁴. In turn, the legitimacy of expressing religious beliefs can only be judged by church authorities, not by public authorities or other entities. In this sense, the latter should not exert pressure on the church to accept or exclude an individual from its fold, including in the context of teaching.

When it comes to professors of the University of Belgrade Faculty of Orthodox Theology, it is noticeable that the legal framework of the Republic of Serbia lacked the necessary (material and procedural) guarantees that would ensure these individuals can effectively enjoy their labour rights. First and foremost, this applies to the *detailed specification of the institution of blessing for application and approval of teaching service, primarily in relation to granting and revoking blessing and approval*⁵⁵. Some of those rules were introduced by Amendments to the Statute of 2022. Introducing these legal rules can help address the concerns related to the fact that giving blessing and approval rested on the overly broad discretionary authority of the bishop, or Synod. This made the result of the procedure for selection, as well as the procedure for entering into an employment relationship, unpredictable. All the more so since main aims of employment are related to the enjoyment of an individual's right to work and the objectivation of the recruitment and hiring process, and only then to protecting the integrity of the worker-employer agreement and ensuring the contracted working conditions.

The right to work is a fundamental human right, which implies the right of everyone to earn a living through freely chosen occupation and employment. The effective enjoyment of this right is not possible if all jobs are not equally accessible to everyone. Therefore, recognising and removing all (formal and factual) obstacles to establishing an employment relationship is crucial for the enjoyment of the right to work. The scope of citizens who will be able to exercise their right to work is influenced, among other things, by the types

⁵³ RAKITIĆ, op. cit., 313.

⁵⁴ ECtHR, June 12, 2014, Case *Fernández-Martínez v. Spain*, cit., para 138.

⁵⁵ Cf. Opinion of the Commissioner for Protection of Equality, cit.

of occupational requirements and the manner of determining their content⁵⁶. Therefore, an employer's freedom to determine the conditions for employment cannot be unlimited; the employer is competent to assess the candidate's competencies for employment as long as those competencies are not related to qualities whose demand and consideration are strictly prohibited⁵⁷. In a similar vein, the European Committee of Social Rights argues that the European Social Charter does not prevent employers from setting any requirements for employment that they wish as long as they are not related to characteristics deemed unacceptable under the anti-discrimination clause⁵⁸. Moreover, the occupational requirements must be objectively determined by the specificities of the work process, demands of the work tasks, and work conditions at a certain job⁵⁹. Otherwise, there would be an unacceptable amount of room for employers to abuse their autonomy, primarily by establishing unnecessary, unjustified, and confusing requirements that prevent or impede citizens from enjoying their right to work⁶⁰. Aside from that, eliminating impartiality and arbitrariness during employment is also supported by the demand to define requirements for employment so that their fulfilment can be determined with certainty in each specific case⁶¹. Additionally, the process of selecting a job candidate should be open and transparent. The process for selecting professors should be based on the candidate's teaching and scientific excellence as well as their expertise and experience. In the context of selecting a theology professor, one must necessarily add the duty of loyalty: «Where a university's ethos is based on religion or belief, it may require individual teachers (and researchers) to act in good faith and with loyalty to that ethos, in conformity with Article 4.2 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation»⁶². In terms of employing a professor at the Faculty of Orthodox Theology, there is also the need to ensure a balance between the employer's freedom of choice of job candidates and their labour rights. The provision of the Law on Higher Education, which determines the obligation of faculties offering study programs in the field of theology to prescribe reasons for the revocation of approval for the teaching service (which the Law qualifies as one aspect of approval revocation, although this is material rather than a procedural issue), and corresponding provisions of the amended Statute of the Faculty of Orthodox Theology, can contribute to this aim.

⁵⁶ BALTIĆ, DESPOTOVIĆ, *Osnovi radnog prava Jugoslavije – sistem radnih odnosa i osnovni problemi sociologije rada*, Savremena administracija, 1971, 182.

⁵⁷ JACQUELET, *La vie privée du salarié à l'épreuve des relations de travail*, Presses Universitaires d'Aix-Marseille, 2008, 59.

⁵⁸ ECSR, Conclusions VIII, 28, in SAMUEL, *Droits sociaux fondamentaux: Jurisprudence de la Charte sociale européenne*, Editions du Conseil de l'Europe, 2002, 27.

⁵⁹ TINTIĆ, *Radno i socijalno pravo. Knjiga prva: radni odnosi (II)*, Narodne novine, 1972, 34-35.

⁶⁰ TINTIĆ, *ibidem*, 35.

⁶¹ KOVAČEVIĆ, *Zasnivanje radnog odnosa*, Pravni fakultet Univerziteta u Beogradu, 2021, 569.

⁶² VRIELINK *et al.*, op. cit., 10.

3.3.2. Duty of Loyalty and the Legal Repercussions of Its Violations

The revocation of approval for the teaching service and violation of duty of loyalty are not qualified as valid grounds for termination of employment in Serbian legislation. However, the Amendment to the Law on Higher Education specifies that revoking approval for the teaching service results in the loss of title (but not in the termination of employment), while Statute of the Faculty of Orthodox Theology, after the 2022 Amendment, explicitly qualifies loss of title caused by the revocation of approval for the teaching – as valid ground for termination of employment. In accordance with the Law on Higher Education, the loss of title is reserved for the most severe violations of the duty of loyalty, while Statute qualifies as reasons for loss of title conscious and continuous activities, attitudes and behaviors that are contrary to the teaching and beliefs of the Church, which significantly threaten the doctrinal position of religion and the Church's teaching, or violate the canonical order and autonomous law of the Church, or if they undermine its reputation⁶³.

Serbia has ratified the International Labour Organisation Convention No. 158, which stipulates that an employee cannot be dismissed against their will unless there is a valid ground related to the employer's needs or the employee's abilities or behaviour. Additionally, valid grounds for dismissal can only be determined by law, which is why the existing legislative situation in Serbia does not align with the constitutional guarantee of protection against wrongful termination of employment⁶⁴. This is particularly important considering that the risk of violating the right to dismissal is intensified by the lack of precise regulations, which prevent the employee from predicting or properly and fully understanding the limitations stemming from the duty of loyalty. This could strip the legal guarantee of protection against unjustified termination of its legal contents, as well as remove it from its intended purpose.

The enjoyment of labour rights for theology professors is also threatened by the lack of *progressive punishment for employees for violations of the duty of loyalty*, given that termination appears as the last resort, i.e., as the *ultima ratio* (even *extrema ratio*). This, more precisely, means that dismissal is permitted only if the exclusion of the employee from the work environment is justified due to the severity of the violation committed or the seriousness of the consequences caused by it (e.g., leaving the church, public engagement against the church's fundamental principles, actions that, under canon law, attest to apostasy from the church, such as heresy, sacrilege related to the Holy Communion, or public blasphemy)⁶⁵. On the other hand, in cases of lesser violations, the employer may apply milder measures, such as a warning and other disciplinary measures⁶⁶. Additionally,

⁶³ Law on Higher Education, cit., Art. 74, par. 15; Decision on the Amendments to the Statute of the University of Belgrade – Faculty of Orthodox Theology, cit., Art. 108b.

⁶⁴ Constitution of the Republic of Serbia, cit., Art. 60, par. 4.

⁶⁵ ROBBERS, op. cit., 219.

⁶⁶ ROBBERS, *ibidem*.

in some legal systems, the rule on termination of employment as a last resort is specified in such a way that, in cases of revocation of approval for the teaching service, the employer is obliged (an obligation of means) to do all in their power to find another job for the individual⁶⁷. This further means that dismissal is permitted only when there is no other possibility to employ the individual in the same, similar, or other corresponding positions. In this sense, there is a need to condition dismissal due to a violation of the duty of loyalty on the obligation of the Faculty of Orthodox Theology to attempt to find another job for the employee before dismissing them. This is stipulated in Amendments to the Statute of 2022 via the rule that the Dean adopts a decision on the termination of the employment if he cannot provide the professor with a job outside of teaching, or if the employee refuses that job⁶⁸. In our opinion, this obligation could be accompanied by the obligation of the University of Belgrade to consider all possibilities for transferring the employee to another unit within the University of Belgrade for another suitable job (e.g., the position of an ethics professor at a different faculty, a researcher at a scientific institute, or a librarian at the University library). Conditioning termination of employment in this way seems acceptable, although Serbian legislation does not provide for this rule in the general regime of employment relationships, whilst in foreign legal systems it is regularly tied to the termination of employment because of the employer's needs, not when there are reasons related to the employee's conduct. This exception seems necessary considering the severely limited ability of theology professors to find a new job. With such an altered legal framework, it may become possible for professors to effectively enjoy their labour rights.

3.3.3. Procedural Guarantees

The effective labour law protection of theology professors implies the enhancement of rules related to creating conditions for the effective exercise of the employee's right to defence, prevention of wrongful dismissal, and creating conditions for an additional reconsideration of the decision to dismiss due to the revocation of approval for the teaching service⁶⁹. The Law on Higher Education prescribes only the faculty's obligation to determine *the right of the teacher in question to express their opinion in the case of revocation of approval for the teaching service*⁷⁰. The Statute of the Faculty of Orthodox Theology has regulated this issue in 2022 via the obligation to deliver a warning, which notifies the employee that there are facts and proof indicating a violation of the duty of loyalty. This warning should also specify a deadline for the employee to respond to all allegations, which is important in order to accurately determine and thoroughly assess the factual situation and so come

⁶⁷ Croatian Constitutional Court, May 22, 2013, Case U-III-702/2009, par. 10.2.5.

⁶⁸ Decision on the Amendments to the Statute of the University of Belgrade – Faculty of Orthodox Theology, cit., Art. 108b, par. 8.

⁶⁹ Martinon, *Essai sur la stabilité du contrat de travail à durée indéterminée*, Dalloz, 2005, 134.

⁷⁰ For Serbian courts, failing to ensure conditions for the employee to enjoy their right to defense in practice constitutes a reason for annulment of decision on termination of employment.

to the right decision without unnecessary interruptions and delays. Additionally, Amended Statute stipulates that the employer's act needs to contain an explanation and information on legal remedies to prevent the abuse of the employer's right to dismissal and to create conditions for the effective exercise of the right to a fair trial. This is in accordance with the jurisprudence of the ECtHR, e.g., the case *Vallauri v. Italy*, for which the Court found a violation of the rights of a Legal Theory Professor, who was employed at the Catholic University of the Sacred Heart (*Università Cattolica del Sacro Cuore*) in Milan for over 20 years on the basis of fixed-term employment contracts concluded for each academic year. In a new call issued by the University, the Law Faculty Council refused to consider Professor Vallauri's application, because the Dean of the Law Faculty informed members of the Council that the Congregation for Catholic Education communicated to the Rector of the University that 'some of this candidate's views were obviously contrary to Catholic doctrine' and that he should cease teaching students 'out of respect for the truth and the well-being of students and the University'.⁷¹ The Court concluded that the Law Faculty Council should have explained how the views of this candidate could have affected the interests of the University. By failing to do so, they violated the procedural aspects of protecting freedom of expression, as well as the candidate's right to a fair trial. This is particularly relevant since the employee did not have the right to appeal the Council's decision, nor the right to appeal before the Italian courts⁷². This confirmed the ECtHR's position that the state's neutrality does not imply the absence of its positive obligation to protect employees in the event of a "conflict" between the autonomy of the church and the human rights and freedoms of employees⁷³.

Furthermore, one should mention the provision of the Law on Higher Education that determines the obligation of the faculty to provide, through a general act, for *the participation of members of the faculty administration in the process of revoking approval for the teaching service*. This provision undoubtedly aims to create conditions for the effective exercise of the faculty's autonomy, as it is not acceptable for the faculty, as the employer, not to participate in a procedure that directly concerns the rights, obligations, and responsibilities of the employment relationship's parties. This is because by concluding an em-

⁷¹ ECtHR, October 20, 2009, Case *Lombardi Vallauri v. Italy* (Application no. 39128/05), ECLI:CE:ECHR:2009:1020JUD003912805, par. 7.

⁷² More precisely, the Court found that the Law Faculty Council did not specify, nor assess, the degree to which the alleged heretical attitudes affected the candidate's teaching activities and how they could jeopardise the University's interest. This is particularly true given that the expression of such views was left undetermined, except for its unspecific mention in the Congregation's letter, with parts of it repeated in the letter sent by the Rector of University to the Dean of the Law Faculty. Such an indication is, according to the Court, 'broad and uncertain', because the decision to refuse considering the candidate's application was based solely on the Congregation's refusal to grant approval, with the content of its decision remaining a secret. In this way, the candidate was denied the opportunity to defend themselves and participate in the contradictory discussion, meaning that conditions for an appropriate judicial control over the contested decision were lacking in this case. ECtHR, October 20, 2009, Case *Lombardi Vallauri v. Italy*, cit., paras. 47-48, 50, 53-54, 71.

⁷³ SYCHENKO, *The European Convention on Human Rights as a tool of protection of individual labour rights*, Doctoral thesis, Università degli studi di Catania – Dipartimento di Giurisprudenza, 2015, 163.

ployment contract (with a candidate for whose engagement the church authority granted approval), refusing to conclude a new employment contract (with a candidate for whose engagement the church authority revoked approval), faculties in a way implement the decision of church authorities but also bring a decision (or more precisely, participate in making a decision) that is decisively and directly concerned with the employment status of their employees⁷⁴. Along these lines is also Bremer's conclusion (which relates to church approval in general, not a specific question related to the University of Belgrade Faculty of Orthodox Theology) that it would be preferable if the procedure for granting church approval is regulated as precisely as possible, with both the state and church involved: the state because, as an employer, it has the duty to select the best candidate for a vacant position; and the church, which «is not tasked with assessing the quality of the candidate but with preserving theological tradition. Unfortunately, these processes are not transparent in any church. It is in the interest of theology, and so the church, that the candidate for the role of professor is informed about the procedure and the possibility of appeal»⁷⁵. Finally, theology professors should be provided with *effective legal remedies for the protection of their rights*, with the accompanying institutional impartiality of bodies that decide on a particular legal remedy. This implies ensuring remedial effectiveness, which is manifested in the ability of the individual to apply a particular legal remedy to ensure appropriate protection, in the sense of rectifying the violation of rights. This was highlighted, among other things, in the ruling in the case of *Vallauri v. Italy*, with the ECtHR concluding that the state must ensure the standard of a fair trial even in disputes with religious organisations and other employers whose activities are based on faith, and their employees⁷⁶.

In our opinion, introduced improvements are important not only for enjoyment and protecting theology professors' labour rights but also for the quality of theological education and the effective exercise of the rights and freedoms of students of the University of Belgrade Faculty of Orthodox Theology, as well as the freedom of the Serbian Orthodox Church.

⁷⁴ ECtHR, June 12, 2014, Case *Fernández-Martínez v. Spain*, cit., par. 115.

⁷⁵ BREMER, op. cit., 181-182.

⁷⁶ SYCHENKO, op. cit., 164.