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# Legal Status of Religious Communities in the Realms of Public and Private Law

## 1. Social facts

In the 1920s and 1930s, before Soviet occupation, Estonia was more or less religiously homogenous. Most of the population, approximately 76%, belonged to the Estonian Evangelical Lutheran Church (hereinafter: EELC).<sup>\*1</sup> The second largest church was the Estonian Apostolic-Orthodox Church (hereinafter: EAOC). Today approximately only 17% of the population are officially connected with different Christian churches. In 1994 and in 1998 two broad surveys were organised about religious life in Estonia. According to the results, the number of people believing in God has grown from 37% to 49%. At the same time, the number of people identifying themselves as atheists has grown from 1% to 6%. Forty-five per cent identified themselves as Lutheran. According to one unofficial estimation “Christian beliefs are mixed with pagan world view” in Estonia. It means that although 45% identify themselves as Lutheran, their actual beliefs do not always reflect church teachings. The EELC has been the dominant church in Estonia since the middle of the 16<sup>th</sup> century and many Estonians traditionally identify themselves as Lutheran. This does not necessarily mean that they have any connection with the institutional structures of the church nor does it always reflect their religiosity. In 1999, the Estonian population was estimated to be 1,445,580. Official membership of the EELC was approximately 177,233.<sup>\*2</sup> This number includes both the active and passive members of the church. For example, in 1997 only 54,481 members had paid their annual membership fee.<sup>\*3</sup> Although results of surveys and presented figures leave considerable room for any kind of interpretation, they hopefully reflect, to some extent, the objective reality of religious life in Estonia.

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<sup>1</sup> According to the national census of 1934, there were 874,026 Evangelical Lutherans in Estonia from a total population of 1,126, 413. See <http://www.einst.ee/society/Soreligion.htm>, 2.02.2000.

<sup>2</sup> Information about current membership of religious organisations is based on data from the Ministry of Internal Affairs last up-dated on 31 December 1999. It has to be mentioned that religious organisations are not obligated to provide the Ministry of Internal Affairs with statistical information of their membership. Religious organisations have voluntarily informed state officials about the number of their adherents.

<sup>3</sup> There has been argued often that low membership of the Church is due to Soviet occupation and atheistic education. This is only the partial truth. It might be interesting to mention that the Evangelical Lutheran Church experienced confrontation between German and national clergy in the 1920s and 1930s, when Estonia was an independent state for the first time in its history. The numbers presented suggest that the Lutheran Church could be regarded as the national Church of Estonia. However, it would be more accurate to say that the Lutheran Church of Estonia was on the verge of becoming a truly national Church when the Second World War and Soviet occupation following the war put a definite stop to that development. See also M. Ketola. Some aspects of the Nationality Question in the Lutheran Church of Estonia, 1918–1939. – Religion, State and Society, Oxford: Keston Institute, 1999, Vol. 27, No. 2, p. 239.

The EAO has 58 congregations and approximately 18,000 members.<sup>4</sup> The Roman Catholic Church has seven congregations with approximately 3500 members. In the 19<sup>th</sup> century the Free Faith Movement (“*prilul*”) was a breeding ground for the Baptist (1884), Adventist and Methodist denominations. In the first independence period 1918–1940 the Pentecostal Movement was introduced. During the Soviet occupation Baptists and other free churches (Adventists and Methodists) were forced to join the Union of Evangelical Christians and Baptists according to the model of Russia. The Pentecostal Movement and Jehovah’s Witnesses were banished. Today, the Union of Evangelical Christians and Baptists has 89 congregations with approximately 6500 members, the Episcopal Methodist Church has 24 congregations with approximately 2000 members and the Union of Adventists of Seventh Day has 18 congregations with approximately 2000 members. At the end of Soviet occupation and later, several Christian congregations have been registered in Estonia, the most influential being the Estonian Christian Pentecostal Church which has 39 congregations and approximately 3500 members, the Word of Life Congregation (*Livets Ord*), the Charismatic Episcopal Church (approximately 300 members) and some others. The Church of Jesus Christ of Latter-day Saints (the Mormons) has approximately 482 members, the New Apostolic Church has ten congregations and 2086 members and the Union of Congregations of Jehovah’s Witnesses has eleven congregations with about 3846 members. Jewish and Muslim communities practised their religion in Estonia under Tsarist rule already. The Jewish community has three independent congregations. There are approximately 2500 Jews in Estonia. Before the Second World War there were two synagogues in Estonia, currently there are no synagogues and no Rabbis. The Estonian Islamic Congregation has approximately 1467 members and is quite unique in nature. In the same congregation there are both Sunnis and Shiites. In 1995, thirteen believers left the congregation and formed the Estonian Mussulman Sunnite Congregation. These thirteen people left the Estonian Islamic Congregation not because of religious reasons but rather because of personal misunderstandings. The first mosque is under construction.<sup>5</sup> The registered congregation (House of Taara and Mother Earth People of Maavald) of confessors of the Estonian native religion has approximately 287 members and three congregations. These are only a few statistics to give a picture of the pluralistic religious life of Estonia. All together there are seven churches, eight associations of congregations and 60 so-called single congregations registered by the Ministry of Internal Affairs in the Register of Churches and Congregations in accordance with the Churches and Congregations Act (hereinafter: CCA). In addition to that, 35 religious societies are registered in accordance with the Non-profit Organisations Act in the Register of Non-profit Organisations.

At the beginning of the 1990s, after regaining independence, Estonia experienced what can be called a “return of the religious”, which was quite common in all Eastern European post-communist societies. These processes were partly an expression of national identity and partly a reaction to the suppression of individual freedom by the Soviet regime. But the religious enthusiasm caused by independence ended quickly and the extensive growth of the membership of religious organisations stopped. Estonia can be considered as quite a secularised country today.

## 2. Historical background

Christianity is most likely to have arrived in Estonia before 1054. Estonia was christianised by the middle of the 13<sup>th</sup> century, through the crusades and other coercive methods. Bishop Albert and the Order of the Sword Brethren combined forces so that the knights of the Order could conquer the land and the priests could baptise the people. As a result of the conquest the Pope as the head of the universal church became the highest suzerain of Estonia. The Pope personally took the Estonian neophytes under his protection, establishing a church state in Estonian territory. In the 17<sup>th</sup> century, when Estonia came under the sovereignty of Sweden, systematic ordering of the life under the Lutheran Church began and the Catholic Church was practically expelled from Estonia. The Reformation turned the church-state relationship upside-down to that of state-church, more precisely, land-church.

<sup>4</sup> The Orthodox Church is deeply divided into the Estonian and Russian parts. It has been proposed that a major part of Orthodox believers belong to the Estonian Orthodox Church. The exact data is missing. The Estonian Orthodox Church, subordinated to the Moscow Patriarchate, has not been registered. The issue is connected with the conflict between these two Orthodox Churches one of which is descendent *in jure* of the EAO of 1923–1940 (subordinated to the Ecumenical Patriarchate of Constantinople) and the other one (subordinated to the Moscow Patriarchate) was established with the help of Soviet occupation in 1945 eliminating the EAO Synod in Estonia.

<sup>5</sup> In accordance with some unofficial estimations there are approximately 10,000 Muslims in Estonia, but they are rather more occupied with the preservation of their national and ethnic roots (like Tatars, Azerbaijanis, Kazakhs, Uzbeks, representatives of peoples of the Northern Caucasus and other mainly Muslim nationalities) than with religious questions.

The history of law on religions in the Republic of Estonia can be divided into four main periods. The first one started with the formation of the independent state in 1918 and with the adoption of the 1920 Constitution, which set forth the principle of strict separation of state and church. The 1920 Constitution was followed by the 1925 Religious Societies and Their Associations Act (hereinafter: the 1925 Act), which reinsured the idea of equal treatment of all religious organisations and the separation of state and church. The 1930s saw significant political changes in Estonian society, which can be illustrated by characteristics such as the centralisation of the state administration, concentration of power, the deficit of democracy and the expansion of state control. In 1934 the Churches and Religious Societies Act (hereinafter: the 1934 Act) was enacted by decree of the State Elder (President), not by parliament. This Act set forth different legal treatment for churches and other religious societies. The status of churches, especially large churches, was to a certain extent similar to the status of a state church. The government of all churches was subjected to control of the State. According to Subsection 84 (1) b) of the 1938 Constitution the leaders of the two most important and largest churches gained *ex officio* membership in the *Riiginõukogu* (Upper House of Parliament).

The third period started with the Soviet occupation of Estonia. The law on religions in the Soviet Union was based on the 1918 Leninist decree on the separation of church from state and school from church. The bizarre fact is that the separation of state and church (resp. religious organisations) was actually non-separation, because of state control over every aspect of the religious organisations, their leaders and, sometimes, even their members. In 1977 a new decree on the General Statute of the Religious Collectives was adopted, but the basic principles remained the same.

The fourth period begins with the regaining of independence at the beginning of the 1990s and with the adoption of the 1992 Constitution. The religious freedom clauses in the 1992 Constitution were followed by the 1993 Churches and Congregations Act. The draft Act on Churches and Congregations (hereinafter: the draft Act) is presented to Parliament. Although Estonia is re-establishing its legal order on the principle of restitution, taking into account the legal situation before the Soviet occupation, it should also take account of new developments and obstacles and the principles of European and international law.

### 3. Legal sources

In Estonia the right to freedom of religion is protected by the Constitution of 1992 and by international instruments that have been incorporated into Estonian law. Starting with protection by international instruments, section 3 of the Estonian Constitution stipulates that universally recognised principles and standards of international law shall be an inseparable part of the Estonian legal system. Section 123 states that if Estonian acts or other legal instruments contradict foreign treaties ratified by the *Riigikogu* (Estonian parliament), the provisions of the foreign treaty shall be applied. Estonia is party to most European and universal human rights documents. Under section 3 of the Estonian Constitution the universally recognised principles and standards of international law are adopted into the Estonian legal system and do not need further transformation. They are superior in force to national legislation and binding for legislative, administrative and judicial powers.

The Estonian Constitution provides express protection to freedom of religion. Section 40 sets out that: "Everyone has freedom of conscience, religion and thought. Everyone may freely belong to churches and religious associations. There is no state church. Everyone has the freedom to practise his or her religion, both alone and in a community with others, in public or in private, unless this is detrimental to public order, health or morals." Section 40 of the Constitution is supplementary to section 45 concerning the right to freedom of expression, section 47 concerning the right to assembly and section 48 concerning the right to association.

The legal sources of the law on religions in Estonia are as follows:

- (1) provisions set forth in national law (the Constitution of the Republic of Estonia, the Non-profit Organisations Act, the Churches and Congregations Act and the other acts directly or indirectly regulating the individual and collective freedom of religion);
- (2) provisions set forth in international law;
- (3) the interpretation of fundamental freedoms and rights in the administration of justice

(including decisions of the European Court of Human Rights and the European Court of Justice<sup>\*6</sup>).<sup>\*7</sup>

## 4. Basic categories of the system

As stated before section 40 of the present Constitution states *inter alia* that “there is no state church”. The 1920 Constitution of the Estonian Republic set out that “there should be no state religion”. The 1920 statement followed clearly from the principle of the separation of state and church. Subsection 1 (2) of the 1925 Religious Societies and their Associations Act stated that all religious organisations had to be equally protected and that none of them could receive preferential treatment or support from the state.<sup>\*8</sup> All religious organisations, including churches, had equal status with other private legal persons.<sup>\*9</sup> Under the 1920 Constitution there was general consent that religious societies of public law would violate the principle of strict separation of state and church, although the strictness of separation itself was not followed very strictly afterwards. The 1938 Constitution stipulated that “there is no state church” but added that the “state can grant status in public law to large churches”. Large churches were churches with over 100,000 members. The churches with a membership greater than 100,000 were the Estonian Evangelical Lutheran Church and the Estonian Apostolic-Orthodox Church. The 1938 Constitution set forth the possibility of granting status in public law to large churches. Whether the aforementioned churches had status in public law is debatable. Although the 1992 Constitution sets forth the separation of state and church it has not been interpreted in administrative practice as a very strict separation. The co-operation between state and church (resp. religious communities) has been accepted to a certain extent.<sup>\*10</sup> The Constitution does not *expressis verbis* provide legal grounds for co-operation, but it can be deduced from the positive obligation of the State to guarantee the freedom of religion set forth in section 40. The other matter is whether all forms of co-operation can be accepted in the light of the constitutional principles. The Estonian constitutional practice is relatively short and not all the nuances of the relationship between state and church (resp. religious communities) have been settled. Despite that some principles of the relationship can be derived from the Constitution.

Section 40 of the Constitution has to be interpreted in conjunction with the other sections of the Constitution. Sections 11, 12, 13 and 19 especially need to be taken into account with respect to the state and church (resp. religious communities) relationship. The principle of equality is anchored in the first sentence of the first paragraph of section 12 of the Constitution, which sets forth that all persons shall be equal before the law. Which means that equal persons have to be treated equally and unequal persons unequally. Subsection 12 (2) of the Constitution sets forth the principle of non-discrimination, prohibiting discrimination *inter alia* on the bases of religion or belief. As the Constitution protects both the individual and the collective freedom of religion these principles also have to be applied to religious communities. The principle of non-discrimination is a special equality right and is deemed to protect minorities. Section 11 of the Constitution sets forth that: “rights and liberties may be restricted only in accordance with the Constitution. Such restrictions must be necessary in a democratic society, and their imposition may not distort the nature of the rights and liberties.” Thus, every case of restriction of religious liberty has to be justified and pass the test of proportionality.

<sup>6</sup> The decisions of the European Court of Justice are the legal source as far as its decisions can be considered as value decisions, because Estonia does not yet belong to European Union.

<sup>7</sup> See also K. Merusk, R. Narits. *Eesti Konstitutsiooniõigusest* (About Estonian Constitutional Law). Tallinn, 1998, p. 169 (in Estonian).

<sup>8</sup> Riigi Teataja (The State Gazette) 1925, 183/184, 96 (in Estonian).

<sup>9</sup> E. Maddison. *Usuühingute ja nende liitude õiguslik iseloom* (Legal Character of Religious Societies and their Associations). – *Eesti Politseileht*, 1926, nr. 11 (221), lk. 161–162 (in Estonian).

<sup>10</sup> For example, according to the Prime Minister’s order the co-ordination of the prisons’ chaplaincy is delegated to one of the Estonian Evangelical Lutheran Church Diaconal Centre’s; the Estonian Council of Churches is annually financed from the state budget, *etc.* There is an established committee of experts for development of co-operation between the Estonian Government and the Estonian Evangelical Lutheran Church. The committee consists of members of the Estonian Government administration and representatives of the Estonian Evangelical Lutheran Church. See Riigi Teataja (The State Gazette) I 1999, 15, 250 (in Estonian).

Subsection 19 (1) of the Constitution states that: “All persons shall have the right to free self-realisation.” Subsection 19 (1) can be interpreted as the additional guarantee for autonomy of religious organisations.<sup>\*11</sup> Moreover section 13 of the Constitution states that: “All persons shall have the right to the protection of the state and of the law /.../. The law shall protect all persons against arbitrary treatment by state authorities.” This means that both the individual believers and religious organisations are protected against unconstitutional and unlawful interference into their affairs. Section 15 adds the right of recourse to the courts if person’s rights or freedoms have been violated. The self-realisation of religious organisations is restricted by subsection 19 (2) of the Constitution stating that: “In exercising their rights and liberties and in fulfilling their duties, all persons must respect and consider the rights and liberties of others and must observe the law”.

## 5. Legal status of religious bodies

Section 6 of the General Part of the Civil Code Act divides legal persons into legal persons in private law (non-profit organisations, foundations and profit-making organisations) and legal persons in public law (state and local government). Section 36 of the Code states that legal persons may be founded pursuant to Acts. Although the Code does not mention any legal persons in public law other than state and local governments, they can be founded and many of them are founded pursuant to an Act. Section 20 of the 1993 CCA states that churches, congregations and associations of congregations are non-profit organisations. It is possible to found public non-profit organisations.<sup>\*12</sup> Although the CCA does not mention anything other than a church, congregation and association of congregations as being non-profit organisations, the Non-profit Organisations Act and the Churches and Congregations Act are generally considered to be related as *lex generalis* and *lex specialis*. The proposed law defines the aforementioned organisations clearly as non-profit organisations in private law. Thus, generally under Estonian law, religious organisations (including churches) are viewed as legal persons in private law. Whether it is possible under the current law to consider religious organisations, or at least some of them, as legal persons in public law is debatable. Some religious organisations have characters of corporations in public law. It has to be mentioned that some scholars find it explicit that since there is no state church in Estonia, all churches have to be considered as legal entities of private law. Like the principle of separation of state and church in Germany is broken by section 140 of the *Grundgesetz* in conjunction with subsection 137 (5) of the Weimar Constitution, which allows religious societies in public law under certain circumstances, section 14 of the 1938 Estonian Constitution allowed the State “to grant status in public law to large churches”. The present Constitution — like the 1920 Constitution — does not have the additional clause that the state can grant status in public law to large churches. The absence of the additional clause can be interpreted as the state not having the authority to grant status in public law to any religious organisation.<sup>\*13</sup> The former interpretation is too narrow and sets unnecessary restrictions to religious liberty. Taking into account the constitutional principles it is more likely to be unconstitutional to grant status in public law only to large churches.

In the process of drafting the new Churches and Congregation Act debates about preferential treatment of some religious organisations intensified. Some attempts to set up sort of preferential legal treatment for the EELC and EAOC have appeared. It was proposed to complement the draft act with the provision according to which the state will enter into agreements with the EELC and EAOC

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<sup>11</sup> Autonomy in administrative law and theory is generally understood as the right to self-government and the right to issue regulations. Both of these components have to be present for autonomy. A regulation is viewed as a generally binding precept issued in a definite form which governs an abstract number of cases and impersonally creates rights and duties. A regulation is therefore substantive law. The right to issue regulations means the delegation of legislation. In Estonia the regulations of autonomous subjects can be either *praeter legem* or *intra legem* regulations. See also K. Merusk. The Right to Issue Regulations and its Constitutional Limits in Estonia. – *Juridica International. Law Review. University of Tartu*, I, 1996, p. 42. Nevertheless, the essence of church (religious organisation) autonomy is debatable in Estonia. See M. Kiviorg. Church Autonomy and Religious Liberty. – *Juridica International. Law Review. University of Tartu*, IV, 1999, pp. 93–99.

<sup>12</sup> K. Merusk. Avalik-õiguslik juriidiline isik avaliku halduse organisatsioon (Public Legal Person in the Public Administration). – *Juridica*, 1996, nr. 7, lk. 177 (in Estonian).

<sup>13</sup> See also M Ernits. Holders and Addressees of Basic Rights in the Constitution of the Republic of Estonia. – *Juridica International. Law Review. University of Tartu*, IV, 1999, pp. 11–34.

recognising them and their congregations and convents as public legal persons.<sup>\*14</sup> This mainly relied upon the argument that these churches had such kind of legal status before the 1940 Soviet occupation according to the 1934 Act and the 1938 Constitution, which is debatable. Another argument for setting up different legal treatment for the aforementioned churches has been that traditional churches, like the EELC and the EAOC as private legal persons, cannot organise themselves under the present law in accordance with their own understandings of their internal organisation (primarily because of their Episcopal structure), which is again debatable. Thus, the proposed recognition of these two churches as public legal persons were badly grounded and the real purpose of the proposal was not clear. In relation to the above, an alternative was also discussed. There was a proposal to add churches, congregations and associations of congregations to the list of persons in private law in the General Part of the Civil Code. The purpose of the latter was to distinguish these religious communities from so-called ordinary non-profit organisations to ensure that their special nature is taken into account. It should also be said that under the present law the internal structure and management of religious organisations is mainly left in their sphere of autonomy. For example, now there are seven registered churches and all of them need to have an episcopal structure, not only EELC and EAOC. According to the legal definition of a church set forth in section 2 of the CCA, an episcopal structure is prescribed to all churches. Moreover, as far as the autonomy of the religious organisations is anchored in the constitutionally protected freedom of religion, the internal structure of all religious organisations should be protected.

The aforementioned proposal to the draft law basically divided religious organisations into three categories, which had different rights. The first category has already been discussed. Into the second category fell other churches and associations of congregations that the state could (but did not have to) on the bases of proposal of the Ministry of Internal Affairs, enter into co-operation agreements. The real distinction between the legal treatment of churches that will be public legal persons and churches that will have co-operation agreements with the state had been left open. In theory the co-operation agreement can also grant status in public law. With the co-operation agreement the state can delegate public functions and obligations to religious organisations. The main known distinction is that agreements with the aforementioned churches had to be signed but entering into the co-operation agreements was at the discretion of the Government. According to one possible interpretation of the proposed law, agreements with other religious organisations (single congregations and religious societies) will not be possible.

In the context of Estonia it is rather difficult to determine whether the social needs or traditions (incl. legal traditions) exist or whether it is strong enough to justify different legal treatment of some religious organisations.<sup>\*15</sup> Furthermore, it is arguable whether the position of the mentioned churches in society is equal and non-equal compared to other religious organisations.<sup>\*16</sup> On the other hand, it has to be pointed out that the EELC has a considerable role, for example, when it comes to public expressions of faith and it is the largest registered religious organisation in Estonia. Nevertheless, this cannot be the bases for the aforementioned different legal treatment.

The agreements between the state and religious communities can be entered into for different purposes. The nature of agreements can also be different. Some of these agreements are considered to be international treaties (such as the agreements negotiated between the state and the Holy See for the Roman Catholic Church), while others are *sui generis*, but are treated as being in a category similar to that of international treaties (such as the agreements concluded between the German state and the Evangelical Church and the Catholic dioceses). The agreements between the state and religious organisations may also have the nature of administrative agreements or co-operation agreements under civil law. The purpose of the agreements may vary from co-ordination and co-operation on issues of public interest to contracting for the specific religious needs of a religious community. The agreements between religious organisations and the state can only be welcomed. But the constitutional principles of equal treatment and non-discrimination have to be taken into account. Furthermore the (co-operation) agreements between the state and religious organisations

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<sup>14</sup> In Estonian administrative law and theory it is accepted that under the authorisation of the law the state may delegate some of its functions to other persons. It is generally understood that one of the conditions of a public legal person is fulfilment of the delegated public functions under the supervision of the state. Thus, the concept of a public religious corporation is somewhat different from the German concept. Although, the essence of the public religious corporation is arguable in Estonia. See M. Kiviorg. *Religiooniõigus. Individuaalne ja kollektiivne usuvabadus* (Law on Religions. Individual and Collective Freedom of Religion). Tartu, 2000 (in Estonian).

<sup>15</sup> See also statistics presented at the beginning of the present paper.

<sup>16</sup> Playing with statistical information may seem cynical because there is more to be taken into account for comparison of religious organisations, for example, their contribution to formation of the national identity or Estonian culture. But it is still problematic to say that EELC with 177,233 members is equal to EAOC with 18,000 members and EAOC is more equal compare to the non-registered Estonian Orthodox Church with membership estimated to be much larger than the membership of EAOC.

are allowed by the present Estonian law. So the practical need for further regulation is debatable. As was mentioned earlier, not all the details of the state and religious organisations' relationship are worked out (if not to say that there is no clear conception of the relationship). The agreements are one possibility to take into account the specific religious needs of different religious organisations and the opportunity for the state to carry out its positive obligation to guarantee freedom of religion. The different question is whether there are alternatives for agreements (administrative acts, special laws).

Subsection 9 (2) of the Constitution extends the rights, liberties and duties listed in the Constitution to legal persons, to the extent that this is in accordance with the general aims of the legal persons, and with the nature of such rights, liberties and duties. Also the organisational formations with partial legal capacity that are not legal persons may be holders of basic rights. The protection of basic rights extends to them only to the extent of their legal capacity.<sup>\*17</sup> Although the Constitution does not make any distinction between public and private legal persons, it has been suggested that public legal persons cannot be holders of basic rights listed in the Constitution. Also private legal persons cannot be holders of basic rights as far as they perform functions of public power. The aforementioned reasoning can easily and unnecessarily restrict the individual and collective freedom of religion. There is no general consensus in Estonian discussion opposite to German that churches (religious organisations) enjoy the protection of basic rights even if they are legal persons in public law. As stated before, in the process of drafting the new Churches and Congregation Act the idea was proposed to give status in public law to two churches. Which in accordance with some explanations of the idea does not necessarily mean integration of these churches into the state's structure or delegation of functions of public power to these churches, but rather the extended recognition of their internal structure. It would be very problematic to exclude these organisations from constitutional protection of freedoms and rights.

## 6. Religious communities as actors in the public sphere

### 6.1. Religious education

Section 37 of the Constitution creates the bases for the entire school system and states *inter alia* that the provision of education shall be supervised by the state. The Estonian school system contains mainly state schools. At the moment there are only two small private church schools (Catholic School and School of the Word of Life Congregation). Thus, the main place for possible religious education is public schools. In accordance with the law there are provided and prescribed possibilities for organising religious education. This can be viewed as evidence of not very strict separation of state and church in Estonia.

According to section 4 of the Education Act, the study and teaching of religion in general education schools is voluntary and non-confessional. Religious education is compulsory for the school if fifteen pupils wish to be taught. The principles and topics of religious studies are set out in the curriculum approved by the Ministry of Education. Religious studies in schools is considered as an elective subject both for pupils and for teachers, and is a subject where the views and contributions to the development of humanity of various religions are taught, thus providing knowledge of different religions. In the primary classes parents decide about the participation of their children in religious studies lessons, at the gymnasium level pupils decide this independently. The teachers of religious studies have to have both theological and pedagogical preparation. Confessional introduction is provided for children by Sunday schools and church schools operated by congregations. Today there is no alternative subject in the curriculum for pupils who do not attend religious studies lessons. There have been debates to reorganise the voluntary religious education into compulsory education to give a non-confessional overview of Christianity and other world religions and to help pupils to understand the impact of different religions on world culture and, perhaps most importantly, to prepare them for the life in the pluralistic and multicultural world. There are various factors that retard the reorganisation of religious education. One of the concerns opposing the reorganisation goes back to some negative experiences of the first days of religious education in public schools after the re-gaining of independence. When schools became open to religious education, many eager

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<sup>17</sup> M. Ernits (Note 13).

people without pedagogical experience and professional skills rushed to teach it.\*<sup>18</sup> Sometimes religious education turned into confessional instruction in schools. Unfortunately individual failures have been exaggerated and generalised.

## 6.2. Faculty of Theology in the State University

The Faculty of Theology has existed at the university since 1632. In 1940 the Soviet authorities abolished the theological department. In 1941 German occupation forces did not allow the reopening of the faculty. However permission was granted to form a Theological Examination Commission at the Consistory. This provided an opportunity for students to complete their degree. After the Second World War, it was decided to continue theological schooling and the Examination Commission was formed into the Theological Institute of the Estonian Evangelical Lutheran Church, which is operating to this day. In 1991 the Faculty of Theology was reopened at University of Tartu. It offers higher theological education, but does not automatically authorise the graduate to serve in the church. This situation is solved in co-operation with the Theological Institute of the EELC. The Faculty of Theology as a part of public university is fully funded by the state budget.

The aims of the Faculty of Theology have been set as follows:

- (1) to prepare a core of highly qualified theologians for the Estonian Evangelical Lutheran Church, the Estonian educational system and social work;
- (2) to study theology, history of religions and Middle Eastern culture and history in conjunction with internationally renowned specialists;
- (3) to help Christian theological thinking consummate its place in Estonian culture.

## 6.3. Religious assistance in public institutions

The realisation of religious freedom in prisons is regulated by section 5 of the CCA, according to which prisons must ensure that their inmates, if they so wish, may practise their religion according to their religious beliefs, if this does not disturb the prison or the interests of the other inmates, and that the services are organised by a church or congregation which has permission therefore from the local government or authority. Accordingly to the Government order co-ordination of the prisons' chaplaincy is delegated to one of the organisations operated by Estonian Evangelical Lutheran Church. The prison chaplains are in principle considered as civil servants. The institution of chaplaincy is inter-denominational and ecumenical. This can be considered problematic in respect of equal treatment that only people from the member-churches of the Estonian Council of Churches are entitled to serve as chaplains. Although the former does not mean that any other religious organisation does not have access to prisons at the request of a prisoner. According to section 98 of the Code of Enforcement Procedure, the prisoner has the right to meet with a member of clergy, and the prison must create conditions for the satisfaction of the religious needs of prisoners and for contacts with the clergy or an authorised representative of their confessions.

Freedom of religion in the armed forces is regulated by only one provision in section 5 of the CCA, according to which the officer of the unit shall guarantee conscripts the opportunity to practise their religion, if they so wish. The chaplaincy in the armed forces is more or less regulated in the same way as prison chaplaincy. According to one unofficial source of information there have been problems in the army guaranteeing the freedom of religion when it comes to the celebration of public holy days. Conscripts are required *in corpore* and not dependent of their religious beliefs to attend services in the Estonian Evangelical Lutheran Church.

Section 5 of the CCA regulates the realisation of religious freedom in medical and care institutions. According to the Act, medical and care institutions must make it possible for their residents, if they so wish, to practise their religion according to their religious beliefs, if this does not disturb the order in these institutions or the interests of the other residents.

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<sup>18</sup> See also P Valk. Development of the Status of Religious education in the Estonian School. European and Local Perspectives. – Conference on Law, Religion and Democratic Society, Estonia, University of Tartu, 1999.



## 6.4. Matrimonial and family law

Currently, no church or congregation in Estonia has the right or authorisation to register marriages of the civil validity. The family law will likely to be amended in the near future. The draft Act passed its first reading in Parliament. It is proposed that the Family Law Act will be complemented with the provision which sets forth that the Ministry of Internal Affairs may, in accordance with the conditions and procedure established by Government, delegate to a clergyman of a church, congregation or association of congregations the obligations of a registry office. It is not entirely clear how the registration of marriages with civil validity will be financed. According to the proposal the training of clergy will be carried out by the state. Clergymen will not get any salary for performing functions of a registry office. Both the state and religious organisations have some concerns, whether the churches, congregations and associations of congregations will be capable of carrying out the obligations of a registry office. Also there has been concern that the proposed law gives the possibility to carry out registration of marriages of the civil validity to too wide a range of people and religious communities.

## 7. Conclusions

Although individual and collective freedom of religion is protected in Estonia, many aspects of state and church (resp. religious communities) relationship are in a process of development. There are symptoms of hesitation and lack of knowledge on both sides — State and religious communities — that obstruct the formation of conception of state-church relationship. It is problematic to agree with the position that the statement “there is no state church” means strict separation of state and church. The term “state-church” describes a certain type of church-state relationship, which is not allowed in the Estonian legal order. The co-operation between state and religious organisations has to be welcomed if it takes account constitutional principles of non-discrimination and equal treatment. This does not also exclude the possibility of recognising or granting status in public law to religious communities. But reasons for establishing and the essence of public religious corporation has to be clarified in the Estonian context.