

EQUALITY PRINCIPLE AND STATUS OF PREDOMINANT RELIGION
(TRADITIONAL RELIGIOUS DENOMINATION) IN THE BALTIC STATES

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As nations go, we may be small in numbers or in the landmass that we control, but never do we need to be small in spirit.

*May we be ardent in our heart's desire, may we be steadfast in our determination,
and may we be indomitable in our common will.*

(President of Republic of Latvia Vaira Vīķe Freiberga)¹

Summary. The public polls in all the Baltic States show that in average about 70% of citizens believe in Churches and that's are incredibly more then for Parliament or Parties. The according to the Lithuania Law on Religious Communities and Associations traditional religious communities and associations are those which are part of the historical, spiritual and social heritage of Lithuania. There is no state religion in Latvia as well. The Constitution of the Republic of Latvia (Satversme) does not mention any specific religion. The Latvian legislation (unlike that of Lithuanian) contains no concept of "traditional" denominations. No such distinction is drawn in the Law on Religious Organisations and that Law does not list religions or religious denominations that are regarded as traditional. In the Estonia, the church – state relations are governed not only by general laws, but also by formal agreements between the State and Churches.

Key words: principle of equality, religious freedom, constitutional regulation of religion, principle of the separation of the State and the Church.

INTRODUCTION

According to the Black Law dictionary² equality is the condition of possessing substantially the same rights, privileges, and immunities, and being liable to substantially the same duties. In United States of Amer-

ica constitutional provision of religion and constitutional principle of equality are understandable like one legal guarantee. **The First Amendment of U.S. Constitution** mandates that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof..." and Supreme Court of U.S.³ declared that the First Amendment forbids not only practices that "aid one religion" or prefer one religion over another", but also those that "aid all religions". This American position is maintained till this day.

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¹ „We Need a Common Future Vision“, President Vaira Vīķe-Freiberga visit in Estonia, 1–3 May 2000 – Riga, Latvijas Vēstnesis, 3 May 2000, p. 20.

² Black C. Black's Law Dictionary. 6th ed. ST. PAUL, MINN WEST PUBLISHING 1990 – p. 536–537.

³ Everson v Board of Education 330 U.S. 1, 15 (1947).

Of course in Europe same as in U.S. the constitutional guarantee of "equal protection of the laws" means that no person or class or persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their property, nationality or religion. Actually we can be sure that equality guaranteed under equal protection clauses in EU or in U.S. is the same in one it is equality under the same conditions and among persons similarly situated. Same as in U.S. also in EU widely accepted religious freedom. As in previously mentioned First Amendment in U.S. also in European Union are **The European Convention on Human Rights Article 9** (1) prescribes that "everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance." Despite their basic similarity with regard to individual religious rights, the United States model and that of Europe appear to be significantly different in the field of collective rights, and in particular with respect to the legal treatment of religious communities. The European model Church are greater involved with State in multiples affairs.⁴ From comparative point of view professor *W.Cole Durham* (*United States of America*) note⁵ that in the world exist three models of churches in the states, which characterized regimes of the states:

- *Cooperationist Regimes*;
- *Accommodationist Regimes*;
- *Separationist Regimes*.

In the European Union according to the Professor *Gerhard Robbers* (*Germany*)⁶ exist three basic types of civil ecclesiastical law system:

- *Existence of a State Church of predominant religion* (England, Denmark, Greece, Malta and Finland);
- *Strict separation of State and Church* (for instance France, Netherlands);
- *Basic separation of State and Church while simultaneously recognizing a multitude of common tasks*, in the fulfillment of which State and Church activity are linked (Belgium, Spain, Italy, Hungary, Austria, Portugal).

Based on the level of state co-operation with religious organisations, all states I would speak about five groups:

- *Church States* – states of religious dictate, which associate themselves with only one religion (Islam states);

⁴ Law and Religion in Post-Communist Europe (Ed. Silvio Ferrari, W.Cole Durham). PEETERS, LEUVEN – PARIS – DUDLEY, MA 2003 p. 413.

⁵ Durham W.C. *Perspectives on Religious Liberty: A Comparative Framework/ Religious Human Rights in Global Perspective/* Ed.by J. D. van der Vyver and J. Witte, Jr. Printed in the Netherlands Published by Kluwer Law International. – 1996. – p. 20–21.

⁶ Robbers G.. *Staat und Kirche in der Europäischen Union/* Gerhard Robbers (Hrsg.) Staat und Kirche in der Europäischen Union. Zweite Auflage Nomos Verlagsgesellschaft, Baden – Baden 2005. s. 630 – 631.

- *partial separation states*, where a constitutionally declared separation of church and state can exist, however, it does not work in practice. States of this model do not associate themselves with any of specific religions, and there exists religious tolerance;

- *complete separation states* (US, France) where the borderline between the state and church is strictly marked;

- *National Church states*, where there is a definite Church of the State (United Kingdom);

- *anti-Church states* (former USSR).⁷

According to the previously mentioned models if we look to the Baltic States from a broad perspective we can draw a conclusion that in the Baltic States are developed cooperationist regimes where existed religious freedom,⁸ and **there is no state religion in Baltic States**, but the same time list of the Churches (not just one) in the Lithuania, Latvia and Estonia are linked with State with some tasks. However, some religious groups enjoy government benefits not available to others. So despite that Baltic states have religious freedom clauses⁹ in their constitutions legislation the reality show us that interpretation of basic separation in the Baltic States **would call as partly separation**. In all of these constitutions are implemented principles of General Equality and, no Discrimination. **If we speak about benefits in Baltic States we mean traditionalism. Traditionality opposite "state church" model where on church dominated mean multi-confesional dominant.**

For all Baltic States are common, that state and church systems are based on the common:

- 1) Social background;
- 2) Historical background (close historical connections with Russia and post soviet Republic status);
- 3) Background of Christianity;
- 4) Development from socialist Law model to countries which belong European Union.

Baltic States nowadays are one of the post-Soviet societies with the experience of the Soviet Marxist-atheist ideology. The forceful atheist propaganda with rapid urbanization affected seriously traditional reli-

⁷ Balodis R. State and Church in the Latvia/ State and Church in the Baltic States: 2001. – R.: Reliģijas Brīvības Asociācija, 2001. p.23.

⁸ The Constitutions of all three States provides for freedom of religion, and as the usually US Department in their annual religious freedom report write: "Government generally respects this right in practice". Religious freedom as one of the most important values of open society, in all Baltic states is confirmed in the Constitutions. According to it, every man in Baltic States has a right to freely choose any religion or faith and to profess it alone or with others, privately or publicly, to perform religious rituals, to practice and promulgate the faith. For sample in Constitution of the Republic of Lithuania are *Article 25 (4)* – "Freedom to express convictions or impart information shall be incompatible with criminal actions – the instigation of national, racial, religious, or social hatred, violence, or discrimination, the dissemination of slander, or misinformation."

⁹ Balodis R. Church and State in the Baltic States: registration and basic principles of formation of religious organisations/ European journal for Church and state Research//European Consortium for Church-State research Belgium 2000. 339 – 358.

gious affiliation trends.¹⁰ Baltic States has gone through the main thrust of transition towards pluralist democracy and market economy in the first half of the 1990s.¹¹

BALTIC STATES: LATVIA, LITHUANIA, ESTONIA

Located in Eastern Europe, close by Russia and borders the Baltic Sea. Relations between all three countries are friendly and close. Population of Baltic States is approximately 7 million. In Lithuania living 3.5 million, Latvia 2.3 million, but in Estonia 1.4 million. During the Soviet era, the Russian language was imposed for official use, nowadays every states has official language (Latvia – Latvian, Lithuania – Lithuanian, Estonia – Estonian). There are some differences between the states: the Latvian and Lithuanian (like Old Prussian) languages belongs to the Baltic branch of the Indo-European language family, Estonians belong to the Balto-Finnic group of the Finno-Ugric peoples, as do the Finns and Hungarians. Unlike Estonia and Latvia, Lithuania's cultural development was affected by Poland rather than Germany and Estonia have very good relationships with Scandinavians countries, especially Finland.¹² All three states is a parliamentary democracies: unicameral legislative bodies. Latvia and Estonia has parliamentary elected president, but Lithuanian president is elected in direct elections. From 2003 all Baltic states are members of EU.

The Latvians, Estonians and Lithuanians joined the family of Christian nations very late. This territories was Christianized in 12th – 13th centuries, through the crusades and other coercive methods (exceptions are Lithuanians they baptized herself and stop Germans crusader invasion).¹³ Nowadays as far as the Baltic

countries are concerned, **Lithuania** has been, like Poland, traditionally Roman Catholic country and is also the most "Christian" of the three nations. Traditionally, most Roman Catholics in Lithuania were either Lithuanians or Poles, and the Orthodox and Old Believer adherents were predominantly Russians. **Estonia** has always been a Lutheran country (in Estonia today are about only 3000 Catholics!). The majority of Estonian citizens are nominally Lutheran. **Latvia** is a multi-confessional country, where the three largest denominations are the Catholics, the Lutherans and the Orthodox Church 95 % members of which are Russian speaking peoples.

There shall not be a State religion in **Lithuania** (*Constitution of the Republic of Lithuania, Article 43*). The Lithuanian law specifies nine religious churches that have been declared "traditional" and therefore are eligible for governmental assistance. They are Roman Catholics, Greek Rite Catholics, Evangelical Lutherans, Evangelical Reformed Church, Russian Orthodox, Old Believers, Jews, Sunni Muslims, and Karaites. According to a decision of the Constitutional Court of the Republic of Lithuania "traditional" is neither created nor abolished by an act of the will of the legislator. The according to the Lithuania Law on religious Communities and Associations **traditional religious communities and associations are those which are part of the historical, spiritual and social heritage of Lithuania**.¹⁴ Naming old churches and religious organizations as traditional organizations but an act stating both their tradition and the status of their relations with society. Such an act reflects the development on the situation of the religious culture in society. Traditional churches in Lithuania receive annual financial support from the State. Other religious communities are not eligible for financial assistance from the Government, but there are no restrictions on their activities or property rights. Traditional religious associations and communities are not required to register their bylaws with the Ministry of Justice in order to receive legal status. However, non-traditional religious communities must present an application, a founding statement signed by no less than 15 members, and a description of their religious teachings and their aims.

There is no state religion. The Constitution of the Republic of Latvia (*Satversme*) does not mention any specific religion. The Latvian legislation (unlike that of Lithuania) contains no concept of "traditional" denominations. No such distinction is drawn in the Law on Religious Organisations and that Law does not list religions or religious denominations that are regarded as traditional. To be correct till this moment Latvia do not have in legislation term "traditional confessions" but

¹⁰ Balodis R. The Constitution of Latvia/ Rechtspolitisches Forum Legal Policy Forum Institut für Rechtspolitik an der Universität Trier, 2004. Nr.26.

¹¹ The Communist regime is marked by many sad cases. One of such events is how Communist treated the Methodists. After World War II the Communist occupant regime liquidated the Methodist Congregation and transferred their properties to the Lutheran Church. The official reason for this action was not typical for the Stalin's time, i.e. "the Methodist organisation is liquidated and deprived of its properties because of co-operation with US special service CIA". The followers of the Pentecostal movement were also told to join Baptists and deprived of their properties. When the leaders of the movement refused to comply, they were arrested and exiled to Siberia. After Stalin's death they were released and allowed to come back to Latvia, where the congregation continued its activities underground. The communist regime of the time was not lenient to Jews. Thus, for example, the Jewish Synagogue in Jekabpils city was remade into a workers' dormitory pursuant the "request" of this Jewish congregation. While one Orthodox church building was adapted to house a returnable containers' reception with the "permission" of the Pope.

¹² Balodis R. History of State and Church Relationships in Latvia/ European Journal for Church and State Research//European Consortium for Church-State research Belgium 2001.–Volume 8 295–317.; Balodis R. Valstybės ir Bažnyčios santykiai Latvijoje /RELIGIJA IR TEISĖ PILIETINĖJE VISUOMENĖJE.– Vilnius: Justitia 2001. (Balodis R. Valstybės ir Bažnyčios santykiai Latvijoje <http://www.tm.lt/religija/1.htm>)

¹³ Balodis R. Satversmes 99. pantā ietverto tiesību principu īstenošana un Eiropas Savienības prakse šajā jomā (*Realisation of Legal Principles Incorporated into Article 99 of the Satversme and Pra-*

ctice of European Union in this area)/Tiesību transformācijas problēmas sakarā ar integrāciju Eiropas Savienībā. – R: Latvijas Universitātes Juridiskā Fakultāte, 2002. p. 409.

¹⁴ Kuznecoviene J. State and Church in Lithuania/ State and Church in the European Union/European Consortium for State and Church research, Nomos Verlagsgesellschaft, Baden – Baden second ed., 2005. p. 289.

right know parliament discussing about such possible amendments. For all that, the confessions included in the Article 51¹⁵ of the Civil Law, as having the right to solemnize the marriages of their members, are called "traditional". These are the Lutheran, Catholic, Orthodox, Old Believer, Methodist, Baptist, Seventh Day Adventist churches and the Jewish religious communities. With Holy See Latvian Government agreement sign on 9 October 2000, which ratified on 12 September 2002, but with other (except Jewish) denomination Government sign agreement on 8 June 2004. Because of the decision of Parliament this agreements was convert like Laws. The first Parliament reading for this Laws will take place on next week – 1 June 2006.

CONCLUSIONS

All Baltic States is definitely a secular states, but Estonian government is not officially tied to a particular religion. That's of course are different from Lithuania and Latvia where state-church relationship based on the traditional churches. But Estonia has non-governmental church association – Estonian Council of Churches, where limited denomination takes part and which serves for Estonian government for same target. In the Council are represented Estonian Lutheran Church, Estonian Adventist Church, Estonian Baptist Church, Estonian Methodist Church, Roman Catholic Church, Armenian Apostolic Church and Orthodox Churches Moscow and Estonian. In Estonia, church – state relations are governed not only by general laws but also by formal agreements between the State and Churches.¹⁶ Some expert for sample Merilin Kiviorg suppose that in fact Estonia has a State Church – Estonian Evangelical Lutheran Church which in fact enjoyed a certain amount of preferential treatment from a State.¹⁷

Not everything that is legal meets moral or religious standards. Hegel has provided a very precise description of preconditions for good interrelations between state and church. He considered that if a religion is genuine and true, if it does not deny the state and has no intention to raise disputes, if it recognizes and supports the state, this religion (church) "should be entitled to its own property as well as an opportunity to express its opinions, and, taking into consideration that the religious cult consists of teaching and practice, the church, apart from the above said, should also have the right to control its followers, i.e. individuals who admit their adherence to this religious community and attend their

services."¹⁸ From other side the state should follow that its citizen freedom manifestations do not collide with the interests of society, however, restriction of religious freedom is admissible if it complies with the following three conditions. First, any restrictions are set down by law (based on regulations that in the respective national legislation have the status of law).¹⁹ Secondly, these regulations should be accessible to people and transparent. In this respect, the legislation of the Baltic States is very close to European standards. At the end I would like notice, that Public polls in all Baltic States show that in average about 70% of citizens believe in Churches and that's are incredibly more then for Parliament or Parties.

LITERATURE

1. **Balodis R.** *State and Church in the Latvia/ State and Church in the Baltic States: 2001.* – Riga: Reliģijas Brīvības Asociācija, 2001.
2. **Balodis R.** History of State and Church Relationships in Latvia/ European Journal for Church and State Research // European Consortium for Church-State research Belgium 2001. Vol. 8.
3. **Balodis R.** Valstybės ir Bažnyčios santykiai Latvijoje /Religija ir teisė pilietinėje visuomenėje. – Vilnius: Justitia 2001. (Balodis R. Valstybės ir Bažnyčios santykiai Latvijoje <http://www.tm.lt/religija/1.htm>).
4. **Balodis R.** Satversmes 99. pantā ietvertu tiesību principu īstenošana un Eiropas Savienības prakse šajā jomā (*Realisation of Legal Principles Incorporated into Article 99 of the Satversme and Practice of European Union in this area*) Tiesību transformācijas problēmas sakarā ar integrāciju Eiropas Savienībā. – Riga: Latvijas Universitātes Juridiskā Fakultāte, 2002. P. 409.
5. **Hegel,** *Философия права (Philosophy of Law)* – Москва: Мысль, 1990.
6. **Kiviorg M.** State and Church in Estonia/ State and Church in the European Union/European Consortium for State and Church research, Nomos Verlagsgesellschaft, Baden – Baden second ed., 2005.
7. **Kuznecoviene J.** State and Church in Lithuani/ State and Church in the European Union/European Consortium for State and Church research, Nomos Verlagsgesellschaft, Baden – Baden second ed., 2005.

¹⁵ „Article 51. If the persons to be married belong to the Evangelical Lutheran, Roman Catholic, Orthodox, Old Believers, Methodist, Baptist, Seventh Day Adventist or believers in Moses (Judaism) denomination and wish to be married by a minister of their denomination who is authorised by the leaders of the denomination concerned, the publication shall take place in accordance with the procedures of the denomination concerned.”

¹⁶ Kiviorg M. State and Church in Estonia/ State and Church in the European Union/European Consortium for State and Church research, Nomos Verlagsgesellschaft, Baden – Baden second ed., 2005. p.100.

¹⁷ Ibid p. 101.

¹⁸ Hegel, *Философия права (Philosophy of Law)*– М. Мысль, 1990, p. 298.

¹⁹ Balodis R. *State and Church in the Latvia/ State and Church in the Baltic States: 2001.* – R.: Reliģijas Brīvības Asociācija, 2001.

LYGIATEISIŠKUMO PRINCIPAS IR RELIGIJOS LAISVĖ BALTIJOS VALSTYBĖSE

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S a n t r a u k a

Atskleidžiant analizuojamą problematiką straipsnyje pirmiausia apžvelgiama lygiateisiškumo principo ir religijos laisvės istorinė raida. Pradžioje nagrinėjamas Jungtinių Valstijų indėlis sukuriant ir pagrindžiant valstybės ir bažnyčios atskyrimo doktriną, taip pat doktrinos „adaptavimo“ specifika Europoje. Vėliau analizuojama valstybės ir bažnyčios atskyrimo principo įgyvendinimo ypatumai Baltijos valstybėse (Lietuvoje, Latvijoje, Estijoje). Čia atskleidžiami lygiateisiškumo principo įgyvendinimo panašumai ir skirtumai. Konstatuojama, kad nors ir visose Baltijos valstybėse, bažnyčios santykiuose su valstybe yra įgyvendintas konstitucinis valstybės ir bažnyčios atskyrimo principas, tačiau tiek šalių istorinės raidos tradicija, tiek ir šiandiena turi savitumo. Straipsnis baigiamas apibendrinimais, kuriuose teigiama, kad nepaisant konstitucinio „valstybės ir bažnyčios atskirimo“ principo bažnyčia Baltijos valstybėse turi ne tik savo vietą visuomeniniame gyvenime, bet ir tam tikrose valstybės gyvenimo srityse išskirtinį visuomenės palaikymą.

Pagrindinės sąvokos: lygybės principas; religijos laisvė; religijos konstitucinis reguliavimas; valstybės ir bažnyčios atskyrimo principas.

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